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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[BCIS No. 2152–01]

RIN 1615–AA63

Employment Authorization Documents

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends Bureau of Citizenship and Immigration Services (BCIS) regulations governing issuance of Employment Authorization Documents (EADs). Through this rule, BCIS will now establish EAD validity periods based on certain criteria, including: The applicant's immigration status; general processing time for the underlying application or petition; required background checks and response times for background checks by other agencies, as necessary; other security considerations and factors as deemed appropriate by BCIS. BCIS will have discretion to modify EAD validity periods both for initial, renewal, and replacement cards. BCIS also will be able to establish EAD validity periods for classes of aliens and for individuals within those classes whose cases warrant a lesser validity period. The rule also removes current regulatory language limiting EAD validity periods to one-year increments for certain classes of aliens who are required to apply for employment authorization. Finally, the rule amends BCIS regulations to reflect that BCIS will issue EADs to aliens granted asylum by the Department of Justice, Executive Office of Immigration Review (EOIR), with validity periods of up to five years, unless otherwise appropriate.

DATES: *Effective date:* This rule is effective July 30, 2004.

Comment date: Written comments must be submitted on or before September 28, 2004.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference BCIS No. 2152–01 in your correspondence. You may also submit comments electronically at: *rfs.regs@dhs.gov.* When submitting comments electronically, you *must* include CIS No. 2152–01 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Program and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 ''I'' Street, NW., ULLICO Building, Third Floor, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Who Is Affected by This Rule?

This interim rule affects aliens who are required to apply for employment authorization or, if employment authorized incident to immigration status, to apply for evidence of employment authorization. This interim rule also affects aliens who have been granted asylum by EOIR and wish to obtain evidence of employment authorization.

What Are the Current Requirements for EAD Issuance?

Under 8 CFR 274a.12(a), certain aliens are authorized employment incident to their immigration status (*e.g.*, lawful permanent residents, lawful temporary residents, parolees, aliens in Temporary Protected Status, etc.). Such aliens are eligible to work in the United States regardless of whether they receive an EAD. However, these aliens must apply to BCIS to receive an EAD evidencing their employment authorization. Under 8 CFR 274a.12(c), certain aliens are required to apply for employment authorization before they may begin to work in the U.S. (*e.g.*, students seeking to perform optical practical training, aliens with pending applications for adjustment of status, etc.). Such aliens must apply to BCIS to receive an EAD authorizing them to work in the United States, as well as evidencing the fact that they are employment authorized.

With limited exceptions, most classes of aliens who are employment authorized under 8 CFR 274a.12(a) or 274a.12(c) are required to apply for employment authorization using the Form I–765, Application for Employment Authorization. If BCIS approves the Form I–765, it will issue an EAD. For certain categories, the current regulations specifically limit the EAD validity period to one-year increments. In all other instances, and with limited exceptions, BCIS through policy has set EAD validity periods at one year.

Why Is BCIS Removing the Current Regulatory and Policy Limitations on EAD Validity Periods?

These regulatory and policy limitations often require an alien whose underlying status is longer than one year, or whose underlying application will remain pending with BCIS for longer than one year, to apply for renewal of the EAD every year, creating a burden on the applicant and an additional workload for BCIS. This rule gives BCIS the discretion and flexibility to modify EAD validity periods for initial, renewal, and replacement cards. BCIS also will establish EAD validity periods for classes of aliens and will preserve the discretion to establish validity periods of varying lengths for individuals within those classes whose cases warrant a lesser validity period. BCIS will issue field guidance to ensure that adjudicators use standard criteria when exercising their discretion in establishing EAD validity periods.

For aliens who are employment authorized incident to status, BCIS does not contemplate issuing employment authorization documents that would expire only upon expiration of the alien's status. BCIS must reserve the right to periodically expire such documents and, where appropriate, issue new cards. This will allow BCIS to address any security concerns and to ensure the integrity of the EADs process by preventing fraud or misuse of such documents. BCIS intends to review all classes of aliens who are employment authorized to determine a general validity period for each class. For example, currently BCIS issues

permanent resident cards (Form I–551) with ten-year validity periods. Similarly, BCIS intends to issue EADs to asylees with a validity period of five years, unless otherwise appropriate. An expiration date on the card reflects only that the card must be renewed, not that the bearer's work authorization has expired.

What Does This Rule Implement?

This interim rule amends 8 CFR 274a.12(a) and (c) to eliminate provisions in the regulations that provide a maximum validity period for certain EADs. This rule also amends 8 CFR 274a.12(a)(5) to reflect that BCIS will issue initial EADs to aliens granted asylum by the EOIR with validity periods of up to five years, unless otherwise appropriate.

Good Cause Exception

The Department of Homeland Security (DHS) has determined that good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) to make this rule effective July 30, 2004, for the following reasons: BCIS is modifying the regulations at 8 CFR 274a.12(a)(5) and 274a.13(a) to facilitate BCIS' immediate compliance with its statutory obligation under the Enhanced Border Security and Visa Entry Reform Act (''Border Security Act''), Pub. L. 107–173, 116 Stat. 543, 556–57; 8 U.S.C. 1158(c)(1)(B), which became effective in May 2002. The Border Security Act requires BCIS to provide asylees with initial evidence of employment authorization. BCIS also is removing the regulatory limitations on certain classes of one-year maximum validity periods to allow BCIS to set more flexible EAD periods. In certain instances, BCIS will be able to set validity periods for longer than one year, thereby benefiting the aliens and reducing BCIS workload associated with yearly EAD issuance. The delay in the implementation of this interim rule for consideration of public comments prior to the effective date of the rule will serve only to increase the current backlog of EAD applications. Accordingly, DHS finds that it would be impracticable and contrary to the public interest to delay the implementation of this rule to allow the prior notice and comment period normally required under 5 U.S.C. 553(b)(B) and(d)(3). DHS nevertheless invites written comments on this interim rule and will consider any timely comments in preparing a final rule.

Regulatory Flexibility Act

This rule will have a positive significant economic impact on a substantial number of small businesses described in the Regulatory Flexibility Act at 5 U.S.C. 605.

With this rule, DHS addresses security concerns and improves BCIS efficiency by giving BCIS more flexibility in determining the appropriate validity period for EADs. Due to security concerns, DHS does not wish to have EADs issued with a validity period that is significantly longer than the immigration status or processing time of the application that the EAD is based upon. However, the validity period needs to be long enough to significantly lessen the burden created by the filing, adjudication, and issuance of EAD renewals. Removing this burden will allow BCIS to better focus its policy and resources upon improving the security and integrity of EADs and the security, integrity, and efficiency of BCIS application processes.

In accordance with the President's long-term goal of a standard BCIS application processing time of six months, this rule is forward-looking, giving BCIS the flexibility to lessen the validity period of affected EADs as BCIS processing times make progress toward and then reach the President's goal.

Considering all of these factors, DHS believes that a flexible validity period established by policy and taking into account security considerations, application processing times, and other factors is more appropriate than the inflexible validity periods contained in the regulatory provisions in place prior to this interim rule.

This change will decrease costs for affected applicants in so far as they will be required to pay the $175 filing fee for the I–765, Application for Employment Authorization, in order to renew their EAD less frequently or, in some situations, not at all.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This rule is considered by DHS to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review.

Obtaining and then presenting an EAD to an employer is how many aliens verify their identity and employment authorization as required by Form I–9, Employment Eligibility Verification. To obtain an EAD, an applicant must submit a Form I–765, Application for Employment Authorization Document, to the appropriate BCIS service center or district office, along with a $175 fee or request for a fee waiver. The fee is necessary to comply with Public Law 100–459, which requires BCIS to prescribe and collect fees to recover the full cost of processing immigration and naturalization applications, petitions, and associated support benefits. An applicant who cannot afford to pay the fee may submit a fee waiver request by following the instructions in 8 CFR 103.7(c). Therefore, the cost of filing each EAD renewal application is approximately $175.

This regulation removes regulatory provisions limiting the validity period for some EADs. At present, BCIS receives more than 950,000 Form I–765 applications for EAD renewal per year. The removal of the regulatory provisions limiting EADs to no more than one year of validity will have no effect by itself. However, there would be an economically significant benefit stemming from the projected BCIS policy change to a process where the validity period of these and certain other EAD categories are established based on based upon security concerns, the underlying application or status, and other appropriate factors.

This policy change would reduce the number of Form I–765 applications for EAD renewal in the future. BCIS cannot yet estimate the magnitude of this reduction because the policy change is still under development. However, BCIS does plan to compensate for the lack of a yearly EAD renewal application from affected aliens by ensuring that certain security and background checks are generally completed prior to issuance of EAD that is valid for more than one year.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. However, as previously stated under Executive Order 12866, the DHS anticipates that as a result of this regulation there will be a reduction in the number of Form I–765 submissions. Accordingly, BCIS has submitted the Paperwork Reduction Change Worksheet (OMB–83C) to the OMB reflecting the reduction in burden hours for Form I–765 and the OMB has approved the changes.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

■ 2. Section 274a.12 is amended by:
■ a. Revising the introductory text of paragraph (a);
■ b. Revising paragraph (a)(5);
■ c. Removing the last sentence in paragraph (a)(15);
■ d. Revising paragraph (c);
■ e. Removing the second sentence in paragraph (c)(9);
■ f. Removing the last sentence in paragraph (c)(10);
■ g. Removing the last sentence in paragraph (c)(16);
■ h. Removing the last sentence in paragraph (c)(20);
■ i. Removing the last sentence in paragraph (c)(24);
■ The revisions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(a) *Aliens authorized incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. Any alien who is within a class of aliens described in paragraphs (a)(3), (a)(4), (a)(6)–(8), or (a)(10)–(16) of this section, and who seeks to be employed in the United States, must apply to the Bureau of Citizenship and Immigration Services (BCIS) for a document evidencing such employment. BCIS may, in its discretion, determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States.

* * * * *

(5) An alien granted asylum under section 208 of the Act for the period of time in that status, as evidenced by an employment authorization document, issued by BCIS to the alien. An expiration date on the employment authorization document issued by BCIS reflects only that the document must be renewed, and not that the bearer's work authorization has expired. Evidence of employment authorization shall be granted in increments not exceeding 5 years for the period of time the alien remains in that status.

* * * * *

(c) *Aliens who must apply for employment authorization.* An alien within a class of aliens described in this section must apply for work authorization. If authorized, such an alien may accept employment subject to any restrictions stated in the regulations or cited on the employment authorization document. BCIS, in its discretion, may establish a specific validity period for an employment authorization document, which may include any period when an administrative appeal or judicial review of an application or petition is pending.

Dated: July 20, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–16938 Filed 7–29–04; 8:45 am]

BILLING CODE 4410–10–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Docket No. 04–10066]

RIN 3245–AE92

Small Business Size Regulations; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; correction of applicability date.

SUMMARY: The U.S. Small Business Administration (SBA) is correcting a final rule that appeared in the **Federal Register** of May 21, 2004 (69 FR 29192). The document amended the definitions of affiliation and employees and made procedural and technical amendments to cover several of SBA's programs.

DATES: *Effective Date:* The rule is effective on June 21, 2004.

Applicability Date: These amendments apply to all solicitations issued on or after June 21, 2004, as well as all applications for financial or other assistance pending as of or submitted to the SBA on or after June 21, 2004. The amendments will apply to all follow-on or contract renewals and size representations submitted as part of an order issued pursuant to a contract (if the Contracting Officer has reserved the order for small businesses and requested a size certification) on or after December 21, 2004. The amendments will apply to all novation and change-of-name agreements executed pursuant to FAR 42.12 on or after December 21, 2004. The SBA believes it is necessary to delay applicability of this rule for such situations because some novations may be in the progress of completion, but not yet completed at this time and this change in applicability date will not hinder the progress of such agreements.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Assistant Administrator, Office of Size Standards, (202) 205–6618, or *Gary.Jackson@sba.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc 04–10066 appearing on page 29192 in the **Federal Register** of Friday, May 21, 2004, the SBA published a final rule amending its size regulations. In response to inquiries, SBA is issuing this notice to clarify application of the effective date, by modifying the

applicability date section of the final rule. The final rule remains effective on June 21, 2004. The amendments apply to all solicitations issued on or after the effective date, as well as all applications for financial or other assistance pending as of or submitted to the SBA on or after the effective date. However, the amendments will apply to all follow-on or contract renewals and size representations submitted as part of an order issued pursuant to a contract (if the Contracting Officer has reserved the order for small businesses and requested a size certification) on or after December 21, 2004. Further, it will apply to all novation and change-of-name agreements executed pursuant to FAR 42.21 on or after December 21, 2004. The SBA believes it is necessary to delay applicability of this rule for such situations because some novations may be in the progress of completion, but not yet completed at this time and this change in applicability date will not hinder the progress of such agreements.

Allegra F. McCullough,

Associate Deputy Administrator for Government Contracting and Business Development.

[FR Doc. 04–17437 Filed 7–29–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE208, Special Condition 23–148–SC]

Special Conditions; Piper Cheyenne PA–31T, PA–31T1, and PA–31T2; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Marinvent Corporation, 50 Rabastaliere East, Suite 23, St. Bruno, Quebec, Canada J3V2A5 for Federal Aviation Administration validation of a Canadian supplemental type certificate (STC) to install the Meggitt Magic Electronic Flight Instrument System (EFIS) and Air Data Attitude and Heading Reference System (ADAHRS) on the Piper Cheyenne model PA–31T, PA–31T1, and PA–31T2 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays and digital attitude sensing equipment for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is July 15, 2004. Comments must be received on or before August 30, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE208, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE208. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127; fax 816–329–4090; e-mail *wes.ryan@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE208.'' The postcard will be date stamped and returned to the commenter.

Background

These special conditions are being issued as part of the validation process for an existing Canadian STC for the Cheyenne, which is currently approved under TC No. A8EA. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS and an ADAHRS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, The Marinvent Corporation must show that the Piper Cheyenne PA–31T, PA–31T1, and PA–31T2 aircraft meet the original certification basis for each model, as listed in type certificate (TC) data sheet A8EA, as follows:

CAR 3, effective May 15, 1956, through Amendment 3–8, effective December 18, 1962; and 14 CFR 23.205, 23.1545, 23.1563 and 23.1585, as amended by Amendment 23–3, effective November 11, 1965; and § 23.1557(c), as amended by Amendment 23–7, effective September 14, 1969. Eastern Region Engineering and Manufacturing Branch letter dated December 6, 1965, addresses the showing of equivalent safety for CAR 3.682, 3.771, and 3.772.

In addition:

Model PA–31T: Special Conditions Nos. 23–3–EA–1, Docket No. 9245, including Amendment No. 1 and AEA–210 letter dated November 11, 1971, and 14 CFR 23.991 as amended by Amendment 23–7, effective September 14, 1969.

Model PA–31T1: Special Conditions No. 23–3–EA–1, Docket No. 9245, including Amendment No. 1 and AEA–210 letter dated November 11, 1971, as amended by AEA–210 letter dated February 1, 1978, referring to Amendment 23–14 and § 23.991 as amended by Amendment 23–7, effective September 14, 1969, and SFAR 27 (Fuel Venting).

Model PA–31T2: Special Conditions No. 23–3–EA–1, Docket No. 9245, including Amendment No. 1 and AEA–210 letter dated November 11, 1971, as amended by AEA–210 letter dated February 1, 1978, referring to Amendment 23–14 and 14 CFR 23.991 as amended by Amendment 23–7, effective September 14, 1969. Noise Certification—14 CFR, part 36 up to Amendment 10, as applicable. Fuel Venting Emissions—SFAR 27 up to Amendment 3, as applicable.The Marinvent Corporation must also show that the Piper Cheyenne PA–31T, PA–31T1, and PA–31T2 aircraft meet the applicable regulations in effect for certification of the Meggit Magic EFIS and ADAHRS, including 14 CFR 23.1301, as amended by Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321, as amended by Amendment 23–49; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Marinvent Corporation plans to incorporate certain novel and unusual design features into airplanes for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' functions means those whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Piper Cheyenne PA–31T, PA–31T1, PA–31T2 airplanes. Should Marinvent apply at a later date for a supplemental type certificate to modify any other model on the same type certificate (A8EA) to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the models listed. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Piper Cheyenne PA–31T, PA–31T1, and PA–31T2 airplanes modified by Marinvent to add an EFIS and an ADAHARS.

1. *Protection of Electrical and Electronic Systems From High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on July 15, 2004.

Scott Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17407 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE207, Special Condition 23–147–SC]

Special Conditions; The New Piper Aircraft, Inc.; PA–28–161, PA–28–181, PA–28R–201, PA–32–301FT, PA–32–301XTC, PA–32R–301, and PA–32R–301T; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to The New Piper Aircraft, Vero Beach, Florida, for a type design change for the PA–28–161, PA–28–181, PA–28R–201, PA–32–301FT, PA–32–301XTC, PA–32R–301, and PA–32R–301T model airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model 700–00006–XXX(), manufactured by Avidyne Corporation, Inc. for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is July 16, 2004. Comments must be received on or before August 30, 2004.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE207, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE207. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127; e-mail *wes.ryan@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE207.'' The postcard will

be date stamped and returned to the commenter.

Background

The New Piper Aircraft, Inc., Vero Beach, Florida, applied for an amendment to Type Certificate No. A3SO and 2A13 to revise the type design of the PA–28–161, PA–28–181, PA–28R–201, PA–32–301FT, PA–32–301XTC, PA–32R–301, and PA–32R–301T model airplanes. The models are currently approved under the type certification basis listed on Type Certificate Data Sheets (TCDS) A3SO and 2A13. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR, part 21, § 21.101, The New Piper Aircraft, Inc.; must show that affected airplane models, as changed, continue to meet the applicable provisions of the regulations incorporated by reference and identified on the appropriate Type Certificate Data Sheet (A3SO and 2A13). In addition, the type certification basis of the airplanes embodying this modification will include the following additional certification basis for installation of the Avidyne Entegra EFIS and Mid-Continent 4300–411 Electric Attitude Indicator:

14 CFR, part 23 regulations §§ 23.301, 23.337, 23.341, 23.561, 23.607, 23.611, as amended by Amdt. 23–48; §§ 23.303, 23.307, 23.601, 23.609, 23.1367, 23.1381 issued on 02/01/65; §§ 23.305, 23.613, 23.773, 23.1525, 23.1549 as amended by Amdt. 23–45; §§ 23.603, 23.605 as amended by Amdt. 23–23; §§ 23.777, 23.1191, 23.1337 as amended by Amdt. 23–51; §§ 23.1301, 23.1327, 23.1335 as amended by Amdt. 23–20; §§ 23.853, 23.867, 23.1303, 23.1307, 23.1309, 23.1311, 23.1321, 23.1323, 23.1329, 23.1351, 23.1353, 23.1359, 23.1361, 23.1365, 23.1431 as amended by Amdt. 23–49; §§ 23.1305 as amended by Amdt. 23–52; §§ 23.1322, 23.1331, 23.1357 as amended by Amdt. 23–43; §§ 23.1325, 23.1543, 23.1545, 23.1555, 23.1563, 23.1581, 23.1583, 23.1585 as amended by Amdt. 23–50; §§ 23. 771 as amended by Amdt. 23–14; §§ 23.1501, 23.1541 as amended by Amdt. 23–21; §§ 23.1523 as amended by Amdt. 23–34; §§ 23.1529 as amended by Amdt. 23–26; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The New Piper Aircraft, Inc. will incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. The use of sensitive solid-state advanced components in analog and digital electronics circuits makes these advanced systems readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10

kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to The New Piper PA–28–161, PA–28–181, PA–28R–201, PA–32–301FT, PA–32–301XTC, PA–32R–301, and PA–32R–301T model airplanes.

Conclusion

This action affects only certain novel or unusual design features on the models listed. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for The New Piper Aircraft, Inc.; PA–28–161, PA–28–181, PA–28R–201, PA–32–301FT, PA–32–301XTC, PA–32R–301, and PA–32R–301T model airplanes modified by installation of the factory optional Avidyne Entegra EFIS system.

1. *Protection of Electrical and Electronic Systems From High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on July 16, 2004.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17402 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18648; Directorate Identifier 2004–NE–26–AD; Amendment 39–13737; AD 2004–15–03]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–3A1 and –3B1 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF34–3A1 and –3B1 series turbofan engines with certain serial numbers (SNs) of stage 5 low pressure turbine (LPT) disks, part number (P/N) 6078T92P01, and or certain SNs of stage 6 LPT disks, P/N 6089T89P01. This AD requires initial and repetitive visual and eddy current inspections of those disks. This AD also allows as optional terminating action to the repetitive inspections, replacement of those SN disks. This AD also requires replacement of certain stage 5 and stage 6 LPT disks. This AD results from a report of a stage 5 LPT disk that failed due to cracking from low-cycle-fatigue (LCF) during factory testing. We are issuing this AD to prevent LCF failure of stage 5 LPT disks and stage 6 LPT disks, which could lead to uncontained engine failure.

DATES: This AD becomes effective August 16, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 16, 2004.

We must receive any comments on this AD by September 28, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: (202) 493–2251.
- Hand Delivery: 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 can get the service information identified in this AD from GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594–6323; fax (781) 594–0600.

You may examine the comments on this AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7757; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: In February of 2004, we became aware of an LCF failure of a stage 5 LPT disk that occurred during factory testing. GE performed a metallurgical evaluation of the disk. The evaluation showed that the origin of the LCF failure was at a disk location contacted inadvertently by electrochemical etch probes. These probes were used to match-mark components during engine assembly. The evaluation concluded that the probe contact caused damage known as electrical arc-out. Electrical arc-out damage can lead to LCF failure of the disk. This condition, if not corrected, could result in uncontained engine failure.

Relevant Service Information

We have reviewed and approved the technical contents of GE Alert Service Bulletin No. CF34–AL S/B 72–A0173, Revision 3, dated July 20, 2004, that lists applicable disks by SN, and describes the procedures for performing visual and eddy current inspections on the applicable stage 5 LPT disks and stage 6 LPT disks.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other GE CF34–3A1 and –3B1 series turbofan engines of the same type design. We are issuing this AD to prevent LCF failure of stage 5 LPT disks and stage 6 LPT disks, which could lead to uncontained engine failure. This AD requires:

- Initial and repetitive visual and eddy current inspections of certain SN stage 5 LPT disks and stage 6 LPT disks.
- Replacement of the suspect disks as optional terminating action to the repetitive inspections.
- Replacement of certain stage 5 LPT disks and stage 6 LPT disks.

You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we posted new AD actions on the DMS and assigned a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket number is in the form ''Docket No. FAA–200X–XXXXX.'' Each DMS docket also lists the Directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2004–18648; Directorate Identifier 2004–NE–26–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the 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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2004–15–03 General Electric Company: Amendment 39–13737. Docket No. FAA–2004–18648; Directorate Identifier 2004–NE–26–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 16, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–3A1 and –3B1 series turbofan engines with stage 5 low pressure turbine (LPT) disks, part number (P/N) 6078T92P01, and or stage 6 LPT disks, P/N 6089T89P01, with serial numbers (SNs) listed in Figure 3 of GE Alert Service Bulletin (ASB) No. CF34–AL S/B 72–A0173, Revision 3, dated July 20, 2004. These engines are installed on, but not limited to, Bombardier Canadair CL600–2B19 (RJ) airplanes.

Unsafe Condition

(d) This AD results from a report of a stage 5 LPT disk that failed due to cracking from low-cycle-fatigue during factory testing. The crack started at the site of an electrical arc-out.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Inspection or Replacement

(f) Using the compliance schedule in Table 1 of this AD:

(1) Visually inspect and eddy current inspect (ECI) applicable stage 5 LPT disks and applicable stage 6 LPT disks using paragraphs 3.C.(1) through 3.E.(6) of GE ASB No. CF34–AL S/B 72–A0173, Revision 3, dated July 20, 2004, if the inspections can be completed within 9 calendar months after the effective date of this AD; or

(2) If the inspections specified in paragraph (f)(1) of this AD cannot be completed within 9 calendar months after the effective date of this AD, replace applicable stage 5 LPT disks and applicable stage 6 LPT disks with a serviceable disk using the compliance schedule in Table 1 of this AD.

(3) The requirements of paragraphs (f)(1) and (f)(2) of this AD do not apply if the inspections were conducted using paragraph (g)(1) of this AD.

TABLE 1.—COMPLIANCE SCHEDULE

On the effective date of this AD, if the disk has:	Then perform the actions defined in paragraph (f) of this AD at next piece-part exposure, not to exceed the accumulation of:
(i) 14,750 or more cycles-since-new (CSN) and has not been fluorescent penetrant inspected (FPI) at an earlier piece-part exposure.	An additional 250 cycles-in-service (CIS) after the effective date of this AD.
(ii) 14,750 or more CSN and has been FPI at an earlier piece-part exposure.	An additional 500 CIS after the effective date of this AD.
(iii) 14,500 or more CSN but fewer than 14,750 CSN	An additional 500 CIS after the effective date of this AD.
(iv) 14,250 or more CSN but fewer than 14,500 CSN	An additional 750 CIS after the effective date of this AD.
(v) 13,000 or more CSN but fewer than 14,250 CSN	An additional 1,000 CIS after the effective date of this AD.
(vi) 2,500 or more CSN but fewer than 13,000 CSN	An additional 4,000 CIS after the effective date of this AD, or 14,000 CSN, whichever comes first.
(vii) Fewer than 2,500 cycles-since-new (CSN)	6,500 CSN.

(g) Before installation in an airplane:

(1) Visually inspect and ECI applicable stage 5 LPT disks and applicable stage 6 LPT disks installed in replacement engines or replacement LPT modules using paragraphs 3.C.(1) through 3.E.(6) of GE ASB No. CF34–AL S/B 72–A0173, Revision 3, dated July 20, 2004, if the inspections can be completed within 9 calendar months after the effective date of this AD; or

(2) If the inspections specified in paragraph (g)(1) of this AD cannot be completed within 9 calendar months after the effective date of this AD, replace applicable stage 5 LPT disks and applicable stage 6 LPT disks installed in replacement engines or replacement LPT modules with a serviceable disk.

Repetitive Inspections

(h) For stage 5 LPT disks and stage 6 LPT disks initially inspected as specified in paragraph (f)(1) or (g)(1) of this AD, perform repetitive visual inspections and ECIs within every 3,100 cycles-since-last-inspection, using paragraphs 3.C.(1) through 3.E.(6) of GE ASB No. CF34–AL S/B 72–A0173, Revision 3, dated July 20, 2004, until the life limit of the part is reached.

Disks That Pass Inspection

(i) If a disk passes inspection, it must be reinstalled into the same LPT module it was removed from.

Optional Terminating Action

(j) Replacement of an applicable stage 5 LPT disk or applicable stage 6 LPT disk with a disk not listed in Figure 3 of GE ASB No. CF34–AL S/B 72–A0173, Revision 3, dated July 20, 2004, is terminating action to the inspections required by this AD for that disk.

Definitions

(k) For the purposes of this AD, a serviceable disk is defined as a disk that has a SN not listed in Figure 3 of GE ASB No. CF34–AL S/B 72–A0173, Revision 3, dated July 20, 2004.

(l) For the purposes of this AD, the definition of piece-part exposure for the stage 5 LPT disk is when the disk is separated from the forward and aft bolted joints.

(m) For the purpose of this AD, the definition of piece-part exposure for the stage 6 LPT disk is when the disk is separated from the forward bolted joint.

(n) For the purposes of this AD, the definition of a replacement engine or replacement LPT module is an engine or LPT module that is not installed on an operational airplane on the effective date of this AD.

Alternative Methods of Compliance

(o) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(p) You must use GE Aircraft Engines ASB No. CF34–AL S/B 72–A0173, Revision 3, dated July 20, 2004, to perform the visual inspections, ECIs, and disk replacements required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594–6323; fax (781) 594–0600, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Related Information

(q) GE Alert Service Bulletin No. CF34–AL S/B 72–A0178 pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on July 20, 2004.

Francis A. Favara,

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

[FR Doc. 04–17040 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–47–AD; Amendment 39–13754; AD 2004–15–20]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, that requires replacing the electrical harness for the tail boom strobe light with a new, improved harness that has a built-in metallic overbraid, and performing an operational test following the replacement. This action is necessary to ensure that there is sufficient lightning bonding at the electrical harness for the tail boom strobe light, and to prevent the simultaneous failure of multiple avionics systems in the event of a lightning strike, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 3, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and -145 series airplanes was published in the **Federal Register** on May 7, 2004 (69 FR 25523). That action proposed to require replacing the electrical harness for the tail boom strobe light with a new, improved harness that has a built-in metallic overbraid, and performing an operational test following the replacement.

Comments

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

Request To Use Latest Revision of Service Bulletin

The commenter, the airplane manufacturer, requests that we refer to Revision 01 of EMBRAER Service Bulletin 145–33–0032 as an appropriate source of service information for certain airplanes. This revision is dated April 27, 2004. The revision corrects the configuration group to which certain airplanes belong, but does not change the scope of the replacement and test that were proposed for those airplanes.

We agree with the commenter that we should use Revision 01 of this service bulletin, and have revised the applicability and paragraph (a) of the final rule to include Revision 01. We have also included a new paragraph (b) in the final rule that gives credit to operators who may have accomplished the actions in accordance with the original issue of the service bulletin.

Conclusion

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

Cost Impact

We estimate that 548 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required replacement, and that the average labor rate is $65 per work hour. Required parts will cost between $915 and $1,255 per airplane, depending on the airplane configuration. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $572,660 and $758,980, or between $1,045 and $1,385 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–15–20 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–13754. Docket 2004–NM–47–AD.

Applicability: Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–33–0032, Revision 01, dated April 27, 2004; and EMBRAER Service Bulletin 145LEG–33–0004, dated November 5, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that there is sufficient lightning bonding at the electrical harness for the tail boom strobe light, and to prevent the simultaneous failure of multiple avionics systems in the event of a lightning strike, which could result in reduced controllability of the airplane, accomplish the following:

Replacement and Test

(a) Within 5,000 flight hours or 30 months after the effective date of this AD, whichever occurs first: Replace the electrical harness of the tail boom strobe light with a new, improved harness that has a built-in metallic overbraid, and perform an operational test on the navigation lights and the anti-collision light after the replacement. Do the actions per the Accomplishment Instructions of the applicable service bulletin in paragraph (a)(1) or (a)(2) of this AD.

(1) EMBRAER Service Bulletin 145–33–0032, Revision 01, dated April 27, 2004 (for Model EMB–135 and –145 series airplanes, except Model EMB–135BJ series airplanes).

(2) EMBRAER Service Bulletin 145LEG–33–0004, dated November 5, 2003 (for Model EMB–135BJ series airplanes).

Actions Accomplished Per Previous Issue of Service Bulletin

(b) Actions accomplished before the effective date of this AD per EMBRAER Service Bulletin 145–33–0032, dated November 5, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 145–33–0032, Revision 01, dated April 27, 2004; or EMBRAER Service Bulletin 145LEG–33–0004, dated November 5, 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in Brazilian airworthiness directive 2004–01–05, dated February 5, 2004.

Effective Date

(e) This amendment becomes effective on September 3, 2004.

Issued in Renton, Washington, on July 21, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–05–AD; Amendment 39–13749; AD 2004–15–15]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, AT–502A, AT–502B, AT–503A, AT–602, AT–802, and AT–802A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA supersedes Airworthiness Directive (AD) 2002–19–10, which applies to certain Air Tractor, Inc. (Air Tractor) Models AT–402, AT–402A, AT–402B, AT–602, AT–802, and AT–802A airplanes. AD 2002–19–10 currently requires you to repetitively inspect the upper longeron and upper diagonal tube on the left hand side of the aft fuselage structure for cracks and contact the manufacturer for a repair scheme if cracks are found. This AD is the result of reports of the same cracks recently found on AT–500 series airplanes. The manufacturer has also issued new and revised service information that incorporates a modification to terminate the repetitive inspection requirements. Consequently, this AD retains the inspection actions required in AD 2002–19–10, adds certain AT–500 series airplanes to the applicability section, changes the compliance times, and incorporates new and revised manufacturer service information that contains a terminating action for the repetitive inspection requirement. We are issuing this AD to detect and correct cracks in the upper aft longeron, which could cause the fuselage to fail. Such failure could result in loss of control of the airplane.

DATES: This AD becomes effective on September 7, 2004.

As of September 7, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–05–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andrew D. McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. Current duty station: San Antonio Manufacturing Inspection District Office (MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? We received reports of cracks found on the left hand upper longeron and upper diagonal support tubes where they intersect on the left hand side of the fuselage frame just forward of the vertical fin front spar attachment point on Air Tractor Model AT–602 airplanes. Additional cracking was later reported on AT–400, AT–602, and AT–802 series airplanes.

Air Tractor started installing extended reinforcement gussets on AT–402 and AT–802 series airplanes at the factory to alleviate the crack condition from occurring. The extended reinforcement gussets were intended to transfer the loads away from the joint. However, an AT–802 airplane with the extended reinforcement gusset installed during factory production was discovered cracked in service at the forward end of the gusset.

These conditions caused us to issue AD 2002–19–10, Amendment 39–12890 (67 FR 61481, October 1, 2002). AD 2002–19–10 currently requires you to do the following on certain Air Tractor Models AT–402, AT–402A, AT–402B, AT–602, AT–802, and AT–802A airplanes:

—Repetitively inspect the upper longeron and upper diagonal tube on the left hand side of the aft fuselage structure for cracks; and
—Contact the manufacturer for a repair scheme if cracks are found.

What has happened since AD 2002–19–10 to initiate this AD? We have received additional reports of the same cracks found on an Air Tractor Model AT–401, AT–502 and AT–502A airplane.

The manufacturer has also issued new and revised service information. The new service information contains procedures for replacing and modifying the upper aft longeron as a terminating action for the repetitive inspection requirement.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could cause the fuselage to fail. Such failure could result in loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Models AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, AT–502A, AT–502B, AT–503A, AT–602, AT–802, and AT–802A airplanes of the same type. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 9, 2004 (69 FR 18848), as corrected on June 4, 2004 (69 FR 31658). The NPRM proposed to supersede 2002–19–10 with a new AD that would require you to repetitively inspect the upper longeron and the upper diagonal tube (as applicable) on the left hand side of the aft fuselage structure for cracks. If cracks are found, the NPRM also proposed to require you to replace and modify the upper and diagonal aft longeron (as applicable). Replacing and modifying the upper aft longeron and the diagonal longeron (as applicable) would terminate the repetitive inspection requirement.

Comments

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's responses to the comments:

Comment Issue No. 1: Remove the Requirement To Inspect, Replace, and Modify the Diagonal Longeron for Models AT–501, AT–502, AT–502A, AT–502B, AT–503A, AT–602, AT–802, and AT–802A Airplanes

What is the commenter's concern? The manufacturer states that we incorrectly proposed a requirement to inspect, replace, and modify the diagonal longeron on Models AT–501, AT–502, AT–502A, AT–502B, AT–503A, AT–602, AT–802, and AT–802A airplanes. The related service information referenced in the proposed AD does not require this action.

We infer that the manufacturer wants us to remove this requirement for the above referenced model airplanes from the final rule AD.

What is FAA's response to the concern? We concur with the commenter. We will change the final rule AD action based on this comment.

Comment Issue No. 2: Correct the Name of Snow Engineering Company in the Table in Paragraph (e) Under the Heading ''Procedures''

What is the commenter's concern? The manufacturer states that the reference to Snow Engineer Co. Service Letter #195, reissued November 10, 2003, should be changed to Snow Engineering Co. Service Letter #195, reissued November 10, 2003.

What is FAA's response to the concern? We concur with the commenter. We will change the final rule AD action accordingly.

*Comment Issue No. 3: Correct the **Federal Register** Version of the Notice of Proposed Rulemaking (NPRM) Published on April 9, 2004 (69 FR 18848)*

What is the commenter's concern? The manufacturer wants the following corrections made in the final rule AD:
—In the table in paragraph (e)(2) under the heading ''Procedures'', reference to Service Letter #218A should be changed to Service Letter #195B;
—In the table in paragraph (e)(4) under the heading ''Procedures'', reference to Service Letter #218B, dated November 10, 2003, should be changed to Service Letter #213B, revised November 10, 2003; and
—In the table in paragraph (e)(7) under the heading ''Procedures'', reference to Service Letter #217B, dated November 10, 2003, should be changed to Service Letter #217B, revised November 10, 2003.

What is FAA's response to the concern? We concur with the commenter. On June 4, 2004 (69 FR 31658), the Office of the Federal Register published a correction to the NPRM that incorporated all of the above comments. We are not changing the final rule AD based on this comment.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:
—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 1,194 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection(s):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	No parts required	$65	$65 × 1,194 = $77,610

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection(s). We have no way of determining the number of

airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
27 workhours × $65 per hour = $1,755	For AT–400, AT–500, and AT–600 series airplanes: $35. For AT–800 series airplanes: $45	For AT–400, AT–500, and AT–600 series airplanes: $1,755 + $35 = $1,790 For AT–800 series airplanes: $1,755 + $45 = $1,800.

What is the difference between the cost impact of this AD and the cost impact of AD 2002–19–10? The difference is the addition of certain Model AT–401, AT–401B, AT–501, AT–502, AT–502A, AT–502B, and AT–503A airplanes to the applicability section of this AD and the cost of replacing any cracked upper aft longeron. We are also removing certain Model AT–402 airplanes from the applicability section of this AD. There is no difference in cost to perform the inspection(s).

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2004–CE–05–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–19–10, Amendment 39–12890 (67 FR 61481, October 1, 2002), and by adding a new AD to read as follows:

2004–15–15 Air Tractor, Inc.: Amendment 39–13749; Docket No. 2004–CE–05–AD; Supersedes AD 2002–19–10; Amendment 39–12890.

When Does This AD Become Effective?

(a) This AD becomes effective on September 7, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2002–19–10.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
AT–401, AT–401B, AT–402, AT–402A, and AT–402B.	0716 through 1144
AT–501, AT–502, AT–502A, AT–502B, and AT–503A.	0037 through 0658
AT–602	0337 through 0664
AT–802 and AT–802A ...	0001 through 0139

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of cracks in the aft fuselage upper longeron, originally detected as excessive movement in the empennage due to the loss of fuselage torsional rigidity. The actions specified in this AD are intended to detect and correct cracks in the upper aft longeron, which could cause the fuselage to fail. Such failure could result in loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must inspect the upper longeron and upper diagonal tube (as applicable) on the left hand side of the fuselage frame just forward of the vertical fin front spar attachment for cracks at the times specified below. You must also replace and modify any cracked upper and diagonal longerons (as applicable) found during any inspection required by this AD before further flight after the inspection in which cracks are found.

Affected models and serial nos.	Inspection compliance times	Procedures
(1) AT–401, AT–401B, serial numbers (S/Ns) 0716 through 1144.	Initially inspect upon the accumulation of 1,250 total hours time-in-service (TIS) or within the next 100 hours TIS after September 7, 2004 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #218A, dated November 10, 2003, as specified in Snow Engineering Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #218B, dated November 10, 2003.

Affected models and serial nos.	Inspection compliance times	Procedures
(2) AT–402, AT–402A, and AT–402B, S/Ns 0716 through 1144.	Initially inspect upon the accumulation of 1,250 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #218A, dated November 10, 2003, as specified in Snow Engineering Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #218B, dated November 10, 2003.
(3) AT–501, AT–502, AT–502B, and AT–503A, S/Ns 0037 through 0658.	Initially inspect upon the accumulation of 4,800 total hours TIS or within the next 100 hours TIS after September 7, 2004 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper longeron is replaced and modified. Replacing and modifying the upper longeron is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #195B, dated November 10, 2003, as specified in Snow Engineering Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #195A, revised November 10, 2003.
(4)AT–502A, S/Ns 0037 through 0658	Initially inspect upon the accumulation of 2,800 total hours TIS or within the next 100 hours TIS after September 7, 2004 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper longeron is replaced and modified. Replacing and modifying the upper longeron is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #195B, dated November 10, 2003, as specified in Snow Engineering Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #195A, revised November 10, 2003.
(5) AT–602, S/Ns 0337 through 0661	Initially inspect upon the accumulation of 700 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper longeron is replaced and modified. Replacing and modifying the upper longeron is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #213A, dated November 10, 2003, as specified in Snow Engineering Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #213B, revised November 10, 2003.
(6) AT–602, S/Ns 0662 through 0664	Initially inspect upon the accumulation of 1,750 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper longeron is replaced and modified. Replacing and modifying the upper longeron is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #213A, dated November 10, 2003, as specified in Snow Engineering Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #213B, revised November 10, 2003.
(7) AT–802 and AT–802A, S/Ns 0001 through 0004 and 0012 through 0118.	Initially inspect upon the accumulation of 250 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper longeron is replaced and modified. Replacing and modifying the upper longeron is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #217A, dated November 10, 2003, as specified in Snow Engineering Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #217B, revised November 10, 2003.
(8) AT–802 and AT–802A, S/Ns 0005 through 0011.	Initially inspect upon the accumulation of 900 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper longeron is replaced and modified. Replacing and modifying the upper longeron is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #217A, dated November 10, 2003, as specified in Snow Engineering Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #217B, revised November 10, 2003.

Affected models and serial nos.	Inspection compliance times	Procedures
(9) AT–802 and AT–802A, S/Ns 0119 through 0139.	Initially inspect upon the accumulation of 1,750 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper longeron is replaced and modified. Replacing and modifying the upper longeron is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #217A, dated November 10, 2003, as specified in Snow Engineering Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #217B, revised November 10, 2003.

(f) You may replace and modify the upper and diagonal longeron (as applicable) at any time as a terminating action for the repetitive inspection requirement in this AD. However, you must replace and modify the upper and diagonal longeron (as applicable) before further flight after any inspection in which cracks are found.

May I Request an Alternative Method of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Fort Worth Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Andrew D. McAnaul, Aerospace Engineer, FAA, Fort Worth ACO, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. Current duty station: San Antonio Manufacturing Inspection District Office (MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Snow Engineering Co. Service Letter #195, reissued November 10, 2003; Snow Engineering Co. Service Letter #195A, revised November 10, 2003; Snow Engineering Co. Service Letter #195B, dated November 10, 2003; Snow Engineering Co. Service Letter #213A, dated November 10, 2003; Snow Engineering Co. Service Letter #213B, revised November 10, 2003; Snow Engineering Co. Service Letter #217A, dated November 10, 2003; Snow Engineering Co. Service Letter #217B, revised November 10, 2003; Snow Engineering Co. Service Letter #218A, dated November 10, 2003; and Snow Engineering Co. Service Letter #218B, dated November 10, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on July 20, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17119 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–03–AD; Amendment 39–13752; AD 2004–15–18]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA supersedes Airworthiness Directive (AD) 2003–24–13, which applies to certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a certain Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. AD 2003–24–13 currently requires you to install an update to the operating software of certain KAP 140 autopilot computer system, change the unit's part number, and change the software modification identification tab. This AD is the result of the FAA inadvertently omitting four affected Honeywell KAP 140 autopilot computer system part numbers and an affected airplane serial number from the applicability section of AD 2003–24–13. This AD retains the actions required in AD 2003–24–13, corrects the applicability section, and incorporates a revised installation bulletin issued by Honeywell.

DATES: This AD becomes effective on September 12, 2004.

As of September 12, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Reports of an unsafe condition on certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system caused us to issue AD 2003–24–13, Amendment 39–13382 (68 FR 67789, December 3, 2003).

The KAP 140 autopilot computer system is located on the lower portion of the center instrument control panel near the throttle on these Cessna airplanes. Because of this location on the instrument control panel of the affected Cessna airplanes, the Autopilot Engage (AP) button could

unintentionally be depressed when the pilot pushes the throttle knob forward. The pilot could also unintentionally engage the autopilot system by inadvertently bumping the Heading (HDG) button, Altitude (ALT) mode-select button, or Autopilot Engage (AP) button on the KAP 140 computer. Unless intentionally engaged, the pilot may not know that the autopilot system is engaged.

The Honeywell KAP 140 autopilot computer system is also installed in the New Piper, Inc. Model PA–28–181 airplanes. This AD will not affect these airplanes because of the location of the equipment. The equipment is installed on the center instrument panel near the throttle on the affected airplanes, but is installed in the upper half of the instrument control panel on the Piper airplanes. The unsafe condition only exists on certain Cessna airplanes.

Honeywell has updated the operating software for the KAP 140 autopilot computer system, which will now allow only the AP button on the instrument control panel to engage the autopilot system. This update also adds two voice messages if auto trim operation is detected, lengthens the amount of time that the autopilot button must be depressed in order for it to engage, and changes how the flight control display shows that the AP has been engaged.

AD 2003–24–13 currently requires the following on certain Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system, part number (P/N) 065–00176–2602, P/N 065–00176–5402, or P/N 065–00176–7702 installed on the center instrument control panel near the throttle:

- Installing an update to the autopilot computer system operating software;
- Changing the unit part number;
- Placing an M tag on the unit serial number tag; and
- Changing the unit's software modification tag.

What has happened since AD 2003–24–13 to initiate this action? We inadvertently omitted four affected Honeywell KAP 140 autopilot computer systems and an affected serial number for Model 182T airplanes from the applicability section. Honeywell revised Installation Bulletin No. 491 to the Rev. 3 level (dated April 2003). We will incorporate this bulletin into this AD.

What is the potential impact if FAA took no action? If not corrected, inadvertent and undetected engagement of the autopilot system could cause the pilot to take inappropriate actions.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a certain Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 10, 2004 (69 FR 11346). The NPRM proposed to supersede AD 2003–24–13 with a new AD that would retain the actions required in AD 2003–24–13, would add four additional affected Honeywell KAP 140 autopilot computer system part numbers and an affected airplane serial number to the applicability section, and would incorporate a revised Honeywell installation bulletin.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in the development of this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue: AD Action Is Not Necessary

What is the commenter's concern? The commenter states that FAA's discussion about the cause of the unsafe condition addressed in the proposed AD is unjustifiable.

The commenter states that an attentive pilot would know if the autopilot has been unintentionally engaged. The commenter also states that it is a convenience to the pilot to have the autopilot mode selector near the throttle while maneuvering during an approach or a go around that may necessitate a change in function.

The commenter states that the proposed AD is not necessary; therefore, the cost to have the software upgraded should be paid for by Honeywell.

We infer that the commenter want us to withdraw the NPRM and current AD 2003–24–13.

What is FAA's response to the concern? We do not agree with that we should withdraw the NPRM or AD 2003–24–13. The changes to the KC 140 autopilot computer system operating software required by this AD and AD 2003–24–13 will greatly limit the ability of the pilot to unintentionally engage the autopilot. The changes will also provide additional indications to the pilot that the autopilot has been engaged.

Because we continue to receive reports of related accidents involving pilots with experience ranging from novice to certified flight instructors, it is an indication that it is not obvious to all pilots that the autopilot is engaged.

We are not changing the final rule AD based on these comments.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 3,681 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7 workhours × $65 per hour = $455	Not applicable	$455	$455 × 3,681 = $1,674,855

Not all Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes on the U.S. registry have a KAP 140 autopilot computer system installed.

Honeywell will provide warranty credit for labor and parts to the extent noted under WARRANTY INFORMATION in Honeywell Service Bulletin No: KC 140–M1, dated August 2002, and Honeywell Installation Bulletin No. 491, Rev. 3, dated April 2003.

What is the difference between the cost impact of this AD and the cost impact of AD 2003–24–13? The difference is the addition of four KC 140 autopilot systems and one airplane serial number to the applicability section of this AD. There is no difference in cost to perform the modification.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2004–CE–03–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–24–13, Amendment 39–13382 (68 FR 67789, December 4, 2003), and by adding a new AD to read as follows:

2004–15–18 Cessna Aircraft Company: Amendment 39–13752; Docket No. 2004–CE–03–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on September 12, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2003–24–13.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are:

(1) equipped with a KAP 140 autopilot computer system, part number (P/N) 065–00176–2501, P/N 065–00176–2602 , P/N 065–00176–5001, P/N 065–00176–5101, P/N 065–00176–5201, P/N 065–00176–5402, or P/N 065–00176–7702, all serial numbers; and

(2) certificated in any category.

Model	Serial Nos.
172R	17280001 through 17281073, 17281075 through 17281127, and 17281130.
172S	172S8001 through 172S9195, 172S9197, 172S9198, and 172S9200 through 172S9203.
182S	18280001 through 18280944.
182T	18280945 through 18281065, 18281067 through 18281145, 18281147 through 18281163, 18281165 through 18281167, and 18281172.
T182T	T18208001 through T18208109, and T18208111 through T18208177.
206H	20608001 through 20608183, 20608185, 20608187, and 20608188.
T206H	T20608001 through T20608039, T20608041 through T20608367, T20608369 through T20608379, T20608381, T20608382, and T20608385.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of inadvertent and undetected engagement of the autopilot system. The actions specified in this AD are intended to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) *For airplanes previously affected by AD 2003–24–13:* install the update to the KC 140 autopilot computer system operating software.	Within the next 100 hours time-in-service (TIS) after January 20, 2004 (the effective date of AD 2003–24–13), unless already done.	Follow Cessna Service Bulletin SB02–22–01, dated November 25, 2002, and Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Honeywell Installation Bulletin No. 491, Rev. 3, dated April 2003.

Actions	Compliance	Procedures
(2) *For airplanes previously affected by AD 2003–24–13:* do the following: (i) Change the unit part number by attaching flavor sticker, part number (P/N) 057–02203–0003, on the unit's serial tag; (ii) Attach an M decal, P/N 057–02984–0501, in front of the unit serial number (this indicates that the unit's P/N has been changed); and (iii) Attach a software mod tag, P/N 057–05287–0301, in place of the old tag to indicate the software change to SW MOD 03/01.	Prior to further flight after installing the update to the KC 140 autopilot computer system operating software as specified in paragraph (e)(1) of this AD, unless already done.	Follow Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Cessna Service Bulletin SB02–22–01, dated November 25, 2002.
(3) *For airplanes not affected by AD 2003–24–13:* install the update to the KC 140 autopilot computer system operating software.	Within the next 100 hours time-in-service (TIS) after September 12, 2004 (the effective date of this AD).	Follow Honeywell Installation Bulletin No. 491, Rev. 3, dated April 2003; Cessna Service Bulletin SB02–22–01, dated November 25, 2002; Honeywell Service Bulletin No: KC 140–M1, dated August 2002; and Cessna Single Engine Service Bulletin SB98–22–01, dated May 18, 1998, as applicable.
(4) For all affected airplanes: install only KC 140 autopilot computer systems, part number (P/N) 065–00176–2501, P/N 065–00176–2602 , P/N 065–00176–5001, P/N 065–00176–5101, P/N 065–00176–5201, P/N 065–00176–5402, or P/N 065–00176–7702, that have been modified as specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD.	As of September 12, 2004 (the effective date of this AD).	Not applicable.

(f) You may request a revised flight manual supplement from Cessna at the address specified in paragraph (h) of this AD.

May I Request an Alternative Method of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19.

(1) Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification (ACO), FAA. For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4407.

(2) Alternative methods of compliance approved in accordance with AD 2003–24–13, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Cessna Single Engine Service Bulletin SB98–22–01, dated May 18, 1998; Cessna Single Engine Service Bulletin SB02–22–01, dated November 25, 2002; Honeywell Service Bulletin No: KC 140–M1, dated August 2002; and Honeywell Installation Bulletin No. 491, Rev. 3, dated April 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on July 21, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17217 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–52–AD; Amendment 39–13753; AD 2004–15–19]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Model PA–46–500TP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain the New Piper Aircraft, Inc. (Piper) Model PA–46–500TP airplanes. This AD requires you to inspect (one-time) for the existence of any protective cover over the percussion caps or silicon tube installed over the end of the trigger mechanism pin of the oxygen generators, and remove any protective cover or silicon tube found. This AD is the result of reports of the above conditions found on the affected airplanes. We are issuing this AD to detect and remove any protective cover over the percussion cap, or any silicon tube over the end of the trigger mechanism pin, which could result in failure of the emergency oxygen system. This failure could lead to the crew and passengers not being able to get oxygen in an emergency situation.

DATES: This AD becomes effective on September 13, 2004.

As of September 13, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received several reports of the protective cover installed over the percussion cap on the oxygen generator on the Models PA–46–310P, PA–46–350P and PA–46–500TP airplanes. Also, a silicon tube may exist over the end of the trigger mechanism pin. Any protective cover installed over the percussion cap, or any silicon tube installed over the trigger, on the oxygen generator renders the emergency oxygen system inoperative.

The affected models in the service bulletin referenced in this AD include the Models PA–46–310P and PA–46–350P airplanes. However, these models are certificated at a lower service ceiling than the Model PA–46–500TP airplane. Since Piper has demonstrated an emergency descent to a lower altitude with no oxygen to the pilot, neither Model PA–46–310P nor PA–46–350P airplanes are affected by the identified condition.

What is the potential impact if FAA took no action? Any protective cover on the percussion cap or silicon tube installed over the end of the trigger mechanism pin could result in failure of the emergency oxygen system. This failure could lead to the crew or passengers not being able to get oxygen in an emergency situation.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Model PA–46–500TP airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 31, 2004 (69 FR 16836). The NPRM proposed to require you to inspect (one-time) for the existence of any protective cover over the percussion caps or silicon tube installed over the end of the trigger mechanism pin of the oxygen generators, and remove any protective cover or silicon tube found.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 135 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do this inspection (and removal of any protective cover on the percussion cap or any silicon tube installed over the end of the trigger mechanism pin):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	No cost for parts	$65	135 × $65 = $8,775.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–52–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–15–19 The New Piper Aircraft, Inc.: Amendment 39–13753; Docket No. 2003–CE–52–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on September 13, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model PA–46–500TP airplanes, serial numbers 4697001 through 4697163, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of a protective cover installed over the percussion cap or a silicon tube installed over the end of the trigger mechanism pin, on the oxygen generator, rendering the emergency oxygen system inoperative. The actions specified in this AD are intended to detect and remove any protective cover over the percussion cap or any silicon tube over the end of the trigger mechanism pin, which could result in failure of the emergency oxygen system. This failure could lead to the crew or passengers not being able to get oxygen in an emergency situation.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect: (i) the percussion cap of any oxygen generator (part number (P/N) 471–025) for the presence of any protective cover; and (ii) the end of the trigger mechanism of any oxygen generator (P/N 471–025) for the presence of any silicon tube.	Within the next 50 hours time-in-service after September 13, 2004 (the effective date of this AD) or within the next 30 calendar days after September 13, 2004 (the effective date of this AD), whichever occurs first, unless already done.	Follow the *INSTRUCTIONS* paragraph in The New Piper Aircraft, Inc. Service Bulletin No. 1140, dated September 16, 2003, and the applicable airplane maintenance manual.
(2) If during the inspections required by paragraphs (e)(1)(i) and (e)(1)(ii) of this AD, you find any protective cover over the percussion cap or any silicon tube over the end of the trigger mechanism, remove any protective cover or silicon tube.	Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already done.	Follow the *INSTRUCTIONS* paragraph in The New Piper Aircraft, Inc. Service Bulletin No. 1140, dated September 16, 2003, and the applicable airplane maintenance manual.
(3) Do not operate the airplane after installation of any oxygen generator (P/N 471–025) referenced in this AD unless any protective cover of the percussion cap or any silicon tube over the end of the trigger mechanism has been removed.	As of September 13, 2004 (the effective date of this AD).	Not applicable.

Note 1: Standard procedure is to remove the protective cover after installation. Refer to the applicable airplane maintenance manual for specific procedures for removing any protective cover of the percussion cap or any silicon tube over the end of the trigger mechanism.

Note 2: The affected models in the service bulletin referenced in this AD include the Models PA–46–310P and PA–46–350P airplanes. However, these models are certificated at a lower service ceiling than the Model PA–46–500TP airplane. Since Piper has demonstrated an emergency descent to a lower altitude with no oxygen to the pilot, neither Model PA–46–310P nor PA–46–350P airplanes are affected by the identified condition.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Hector Hernandez, Aerospace Engineer, FAA, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703–6097.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in The New Piper Aircraft, Inc. Service Bulletin No. 1140, dated September 16, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on July 22, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17218 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–40–AD; Amendment 39–13745; AD 2004–15–11]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC155B and B1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that requires cleaning the auxiliary system unit (ASU) board

and modifying the wiring and wiring harness. If a temporary modification is done, the AD requires inserting a placard regarding on-ground operation of the emergency landing gear pump (pump). Also, this AD revises the Limitations section of the Rotorcraft Flight Manual (RFM) to limit the operation of the pump. Permanently modifying the wiring and wiring harness and removing the placard and limitations from the RFM is terminating action for the requirements of this AD. This amendment is prompted by the report of an emergency landing with the landing gear retracted. The landing gear failed to extend in normal and emergency extension modes following failure of the ASU board 10 Alpha 2. The actions specified by this AD are intended to prevent an electrical short circuit, failure of landing gear to extend, and a landing gear-up emergency landing.

DATES: Effective September 3, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5127, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on March 26, 2004 (69 FR 15744). That action proposed to require cleaning the ASU board and modifying the wiring and wiring harness. If a temporary modification is done, the action proposed to require inserting a placard regarding on-ground operation of the pump. Also, the action proposed to revise the Limitations section of the RFM to limit the operation of the pump. Also proposed was permanently modifying the wiring and wiring harness and then removing the placard and limitations from the RFM, which would be terminating action for the requirements of the AD.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Model EC 155B and B1 helicopters equipped with ASU board 10 Alpha 2, part number (P/N) SE07451. The DGAC advises that a landing gear did not extend in ''NORMAL'' and ''EMERGENCY'' extension modes due to a short-circuit between two components of the ASU board 10 Alpha 2.

ECF has issued Alert Telex No. 31A005R1, dated September 19, 2002, and Alert Service Bulletin (ASB) Nos. 31A005 and 31A008, both dated August 20, 2003. The Alert Telex and ASB No. 31A005 describe procedures for modifying the electrical circuit to preclude the risk of the landing gear not extending in the normal and emergency extension modes following failure of the ASU board 10 Alpha 2. ASB No. 31A008 describes procedures to enhance the reliability of the normal and emergency landing gear extension functions by separating their power supplies. The DGAC classified these service bulletins as mandatory and issued AD Nos. 2002–515(A) R1 and 2003–323(A), both dated September 3, 2003, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 5 helicopters of U.S. registry, and modifying the electrical system will take about 11 work hours per helicopter at an average labor rate of $65 per work hour. Required parts will cost approximately $400 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $5,575.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–15–11 Eurocopter France: Amendment 39–13745. Docket No. 2003–SW–40–AD.

Applicability: Model EC155B and B1 helicopters with auxiliary system unit (ASU) board 10 Alpha 2, part number (P/N) SE07451, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical short circuit, failure of landing gear to extend, and an emergency landing, accomplish the following:

(a) Within 15 hours time-in-service (TIS), clean the auxiliary system unit (ASU) board 10 Alpha 2. Clean the ASU board by following the Accomplishment Instructions, paragraphs 2.B.1, and 2.B.2.a., of Eurocopter EC155 Alert Service Bulletin (ASB) No. 31A005, dated August 20, 2003 (ASB No. 31A005).

(b) Within 30 days, modify the wiring and wiring harness permanently by complying with paragraph (c) of this AD or temporarily by following the Accomplishment Instructions, paragraphs 2.B.1. and 2.B.2.a. through 2.B.2.d. of ASB No. 31A005. If temporarily modified:

(1) Install a self-adhesive placard of the size and in the location depicted in Figure 4 of ASB No. 31A005 with the following text in white letters on a red background: ''CAUTION: ON GROUND OPERATION OF EMERGENCY LANDING GEAR PUMP IS *TIME LIMITED*—SEE OPERATING LIMITATIONS'' and

(2) Revise the Operating Limitations by inserting the following text into the Rotorcraft Flight Manual (RFM):

''(i) Limit the emergency landing gear pump (pump) to 10 minutes of continuous operation.

(ii) When the pump is continuously operated from 1 to 5 minutes, allow it to cool for 15 minutes before further use.

(iii) When the pump is continuously operated from 5 to 10 minutes, allow it to cool for 30 minutes before further use.''

Note 1: Modifying the electric wiring covered by Alert Telex No. 31A005R1, dated September 19, 2002, led to inhibiting the protective thermal switch of the electric pump. This resulted in the need for a limitation placard. The purpose of the limitation placard is to remind operators about the on-ground operating limitations that apply to the electric pump.

(c) Within 10 months, modify the wiring and wiring harness by following the Accomplishment Instructions, paragraphs 2.A. and 2.B., of Eurocopter EC155 ASB No. 31A008, dated August 20, 2003 (ASB No. 31A008). If you made the temporary modifications described in paragraph (b) of this AD, remove the placard from the helicopter and the limitations inserted in the RFM as a result of paragraphs (b)(1) and (b)(2) of this AD.

(d) Permanently modifying the wiring and wiring harness following ASB No. 31A008 is terminating action for the requirements of this AD.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(f) Special flight permits will not be issued.

(g) Cleaning the auxiliary system unit and modifying the wiring and wiring harness shall be done by following Eurocopter EC155 Alert Service Bulletin No. 31A005 and Alert Service Bulletin No. 31A008, both dated August 20, 2003, as applicable. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(h) This amendment becomes effective on September 3, 2004.

Note 2: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2002–515(A) R1 and 2003–323(A), both dated September 3, 2003.

Issued in Fort Worth, Texas, on July 16, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–17219 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–302–AD; Amendment 39–13751; AD 2004–15–17]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires a one-time inspection to determine the part number of the engine mounting frames, brace struts, and attachment fittings; and related corrective action. This action is necessary to ensure the structural integrity of the engine-to-wing load path and prevent possible separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 3, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of September 3, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the **Federal Register** on June 2, 2004 (69 FR 31053). That action proposed to require a one-time inspection to determine the part number of the engine mounting frames, brace struts, and attachment fittings; and related corrective action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,660, or $260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–15–17 Fokker Services B.V.: Amendment 39–13751. Docket 2002–NM–302–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category; on which one or more of the modifications specified in paragraph 1.A.(1) of Fokker Service Bulletin F27/54–53, dated February 15, 2002, has been done.

Compliance: Required as indicated, unless accomplished previously.

To ensure the structural integrity of the engine-to-wing load path and prevent possible separation of the engine from the airplane, accomplish the following:

One-Time Inspection

(a) Within 24 months after the effective date of this AD: Do a one-time general visual inspection to determine the part numbers of the engine mounting frames, brace struts, and attachment fittings; per the Accomplishment Instructions of Fokker Service Bulletin F27/54–53, dated February 15, 2002. Do the inspection and corrective action per the Accomplishment Instructions of the service bulletin. Do the related corrective action before further flight.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Related Service Information

Note 2: Fokker Service Bulletin F27/54–53, dated February 15, 2002, references Fokker Service Bulletin 51–24, dated December 1, 1971, as the appropriate source of service information for installing a new, improved engine mounting frame; and Fokker Service Bulletin F27/54–26, Revision 5, dated September 30, 2001, as the appropriate source of service information for installing new, improved, stronger brace struts and brackets.

Parts Installation

(b) As of the effective date of this AD, no person may install on any airplane an engine mounting frame, brace strut, or attachment fitting unless that part has been identified as appropriate for the airplane configuration, as specified in the Accomplishment Instructions of Fokker Service Bulletin F27/54–53, dated February 15, 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Fokker Service Bulletin F27/54–53, dated February 15, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 2002–067, dated May 31, 2002.

Effective Date

(e) This amendment becomes effective on September 3, 2004.

Issued in Renton, Washington, on July 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17220 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–344–AD; Amendment 39–13750; AD 2004–15–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires modification of certain wires in the right-hand wing. This action is necessary to ensure that fuel quantity indication wires are properly separated from wires carrying 115-volt alternating current (AC). Improper separation of such wires, in the event of wire damage, could lead to a short circuit and a possible ignition source, which could result in a fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 3, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington

98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes was published in the **Federal Register** on May 17, 2004 (69 FR 27868). That action proposed to require modification of certain wires in the right-hand wing.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $1,880 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $113,390, or $2,465 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–15–16 Airbus: Amendment 39–13750. Docket 2002–NM–344–AD.

Applicability: Model A310 series airplanes on which neither Airbus Modification 12427 nor 12435 has been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that fuel quantity indication wires are properly separated from wires carrying 115-volt alternating current (AC), accomplish the following:

Modification

(a) Within 4,000 flight hours after the effective date of this AD: Modify the routing of wires in the right-hand wing by installing cable sleeves, per the Accomplishment Instructions of Airbus Service Bulletin A310–28–2148, Revision 01, dated October 29, 2002.

Actions Accomplished Previously

(b) Modification of the routing of wires accomplished before the effective date of this AD per Airbus Service Bulletin A310–28–2148, dated January 23, 2002, is acceptable for compliance with the corresponding requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A310–28–2148, Revision 01, dated October 29, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–578(B), dated November 27, 2002.

Effective Date

(e) This amendment becomes effective on September 3, 2004.

Issued in Renton, Washington, on July 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17221 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket No. 040408109–4209–02]

RIN 0607–AA41

Amendment to the Age Search Fee Structure

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) is amending the Code of Federal Regulations (CFR), to increase the fee for conducting an Age Search from $40.00 to $65.00. The Census Bureau also is adding an additional charge of $20.00 per case for expedited requests requiring search results within one day. These changes are being made to recover the increase in operating costs associated with processing an Age Search request.

EFFECTIVE DATE: This rule is effective on August 30, 2004.

FOR FURTHER INFORMATION CONTACT: Eileen Little, Chief, Survey Processing

Branch, National Processing Center, U.S. Census Bureau, 1201 East 10th Street, Building 64C, Jeffersonville, IN 47132, by telephone at (812) 218–3796 or by fax at (812) 218–3081.

SUPPLEMENTARY INFORMATION

Background

The age and citizenship searching service is a self-supporting operation of the Census Bureau, conducted in accordance with Title 13, United States Code (U.S.C.), Section 8(a). Under this statute, all expenses incurred in the retrieval of personal information from decennial census records and the preparation of census transcripts are covered by fees paid by individuals who request this service. The Age Search census transcript provides proof of age to qualify individuals for social security or other retirements benefits, proof of citizenship to obtain passports, proof of family relationships for rights of inheritance, or to satisfy other situations where a birth certificate is required but not available. Individuals request the Age Search service to qualify for social security/retirement benefits, obtain passports, documentation for court litigation or insurance settlements, and genealogical research. The 1910 through 2000 censuses in custody of the Census Bureau are confidential and protected from disclosure by Title 13, U.S.C., Section 9. No transcript of any record will be furnished that would violate statutes requiring that information furnished to the Census Bureau be held confidential and not used to the detriment of the person to whom it relates.

On April 30, 2004, the Census Bureau published in the **Federal Register** (69 FR 23700) a notice of proposed rulemaking and request for comments on this subject. The Census Bureau did not receive any comments on that notice and therefore the proposed rule is adopted as final.

Program Requirements

There has not been an Age Search fee increase since February 1, 1993. Due to an increase in operating costs over this 11-year period and in order to help maintain the self-supporting financial status, the Census Bureau is making the following amendment to 15 CFR 50:

• Amend Section 50.5 to update the fee structure and add a fee charge for expedited requests. The Census Bureau is increasing the fee structure from $40.00 to $65.00 on searches of one census for one person and one transcript. The Census Bureau also is adding an additional charge of $20.00 per case for expedited requests requiring search results within one day. The additional $20.00 charge for expedited cases represents the estimated cost to the Census Bureau for this service.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. Most, if not all, respondents affected by the fee increase are individuals, not small or large businesses. No comments were received on the certification therefore a final regulatory flexibility analysis was not required or prepared.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a 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 current Office of Management and Budget (OMB) control number. On July 1, 2004, OMB cleared the form used to request age searches (Form BC–600), and the associated increase in fee structure, under OMB Control Number 0607–0117. This clearance addresses increasing the fee structure from $40.00 to $65.00 on searches of one census for one person and one transcript, and adding an additional charge of $20.00 per case for expedited requests requiring search results within one day.

List of Subjects in 15 CFR Part 50

Census data, Population census, Statistics.

■ For reasons set out in the preamble, Part 50 is amended as follows:

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

■ 1. The authority citation for 15 CFR Part 50 is revised to read as follows:

Authority: 15 U.S.C. 1525–1527 and 13 U.S.C. 3 and 8.

■ 2. Revise § 50.5 to read as follows:

§ 50.5 Fee structure for age search and citizenship information.

Type of service	Fee
Searches of one census for one person and one transcript	$65.00
Each additional copy of census transcript	2.00
[1] Each full schedule requested	10.00

[1] The $10.00 for each full schedule requested is in addition to the $65.00 transcript fee.

Note: An additional charge of $20.00 per case is charged for expedited requests requiring search results within one day.

Dated: July 27, 2004.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 04–17359 Filed 7–29–04; 8:45 am]

BILLING CODE 3510–07–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–0098

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the ''Commission'' or ''FTC'') is issuing this final rule to amend the FTC's Telemarketing Sales Rule (''TSR'') by revising the fees charged to entities accessing the National Do Not Call Registry.

EFFECTIVE DATE: This rule will become effective September 1, 2004.

ADDRESSES: Requests for copies of this Final Fee Rule should be sent to: Public Reference Branch, Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete public record of this proceeding is also available at that address, and on the Internet at: *http://www.ftc.gov/bcp/rulemaking/tsr/tsrrulemaking/index.htm.*

FOR FURTHER INFORMATION CONTACT: David M. Torok, Staff Attorney, (202) 326–3075, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On December 18, 2002, the Commission issued final amendments to the Telemarketing Sales Rule, which, *inter alia,* established the National Do

Not Call Registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls. 68 FR 4580 (Jan. 29, 2003) (''Amended TSR''). Under the Amended TSR, most telemarketers are required to refrain from calling consumers who have placed their numbers on the registry. 16 CFR 310.4(b)(1)(iii)(B). Telemarketers must periodically access the registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered. 16 CFR 310.4(b)(3)(iv).[1]

Shortly after issuance of the Amended TSR, Congress passed The Do-Not-Call Implementation Act, Pub. L. No. 108–10 (2003) (''the Implementation Act''). The Implementation Act gave the Commission the specific authority to ''promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the ''do-not-call'' registry of the [TSR] * * * No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available * * * to offset the costs of activities and services related to the implementation and enforcement of the [TSR], and other activities resulting from such implementation and enforcement.'' *Id.* at § 2.

On July 29, 2003, pursuant to the Implementation Act and the Consolidated Appropriations Resolution of 2003, Pub. L. No. 108–7 (2003), the Commission issued a Final Rule further amending the TSR to impose fees on entities accessing the National Do Not Call Registry. 68 FR 45134 (July 31, 2003) (''the Original Fee Rule''). Those fees were based on the FTC's best estimate of the number of entities that would be required to pay for access to the national registry, and the need to raise $18.1 million in Fiscal Year 2003 to cover the costs associated with the implementation and enforcement of the ''do-not-call'' provisions of the Amended TSR. The Commission determined that the fee structure would be based on the number of different area codes of data that an entity wished to access annually. The Original Fee Rule established an annual fee of $25 for each area code of data requested from the national registry, with the first five area codes of data provided at no cost. The maximum annual fee was capped at $7,375 for entities accessing 300 area codes of data or more. *Id.* at 45141.

In the Consolidated Appropriations Act of 2004, Pub. L. No. 108–199 (Jan. 23, 2004) (''the 2004 Appropriations Act''), Congress permitted the FTC to collect offsetting fees in Fiscal Year 2004 to implement and enforce the TSR. *Id.* at Division B, Title V. Pursuant to the 2004 Appropriations Act and the Implementation Act, as well as the Telemarketing Fraud and Abuse Prevention Act, 15 U.S.C. 6101–08 (''the Telemarketing Act''), the FTC issued a Notice of Proposed Rulemaking to amend the fees charged to entities accessing the National Do Not Call Registry, 69 FR 23701 (April 30, 2004) (''the Revised Fee NPRM'').

In the Revised Fee NPRM, the Commission proposed revising the fees for access to the national registry in order to raise $18 million to offset costs the agency expects to incur in this Fiscal Year for purposes related to implementing and enforcing the ''do-not-call'' provisions of the Amended TSR. Based on the number of entities that had accessed the registry through early March 2004, the Commission proposed revising the fees to charge $45 annually for each area code of data requested from the national registry, with the first five area codes of data provided at no cost.[2] The maximum annual fee would have been capped at $12,375 for entities accessing 280 area codes of data or more. *Id.* at 23703.

The Commission received 25 comments in response to the Revised Fee NPRM.[3] Based on its review of the record in this proceeding, and on its law enforcement experience in this area, the Commission hereby promulgates this Final Rule revising the fees for entities accessing the National Do Not Call Registry.

II. Imposition of the Fees and Use of the Funds

A number of commenters disapprove of raising the fees charged for access to the National Do Not Call Registry. Generally, these commenters state that the proposed increase in fees will be ''economically devastating'' to the teleservices industry and will ''inevitably lead to the loss of telemarketing jobs.''[4] ATA claims that the proposed fee increase ''serves only to underscore and exacerbate constitutional and systematic failings in the DNCR fee structure.''[5] On the other hand, other commenters cite the registry as being for ''the greater good of all consumers'' whose costs are appropriately borne by the telemarketing industry.[6]

Some of the commenters that disapprove of the proposed increase in fees state that, prior to any fee increase, ''the FTC must investigate whether there are entities that should be paying for access but fail to do so.''[7] Since the opening of the national registry, the agency has monitored industry payment for access. We have found no evidence of widespread noncompliance with the Original Fee Rule. Moreover, no commenter has provided any concrete information about such alleged noncompliance, only speculation.[8] As

[1] The Commission recently amended the TSR to require telemarketers to access the national registry at least once every 31 days, effective January 1, 2005. *See* 69 FR 16368 (Mar. 29, 2004).

[2] Once an entity requested access to area codes of data in the national registry, it could access those area codes as often as it deemed appropriate for one year (defined as its ''annual period''). If, during the course of its annual period, an entity needed to access data from more area codes than those initially selected, it would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period was divided into two semi-annual periods of six months each. Under the proposed rule, obtaining additional data from the registry during the first semi-annual, six month period would have required a payment of $45 for each new area code. During the second semi-annual, six month period, the charge for obtaining data from each new area code requested during that six-month period would have been $25. These payments for additional data would provide the entity access to those additional area codes of data for the remainder of its annual term.

[3] A list of the commenters in this proceeding, and the acronyms used to identify each, is attached hereto as an appendix. Comments submitted in response to the Revised Fee NPRM will be cited in this Notice as ''[Acronym of Commenter] at [page number].''

[4] DMA at 2; MPA at 1. *See also* TCIM at 2; ATA at 1–3; IMC at 1–2; AIA at 1.

[5] ATA at 1–3. *See also* IMC at 1–2. ATA raised similar arguments regarding the constitutionality of the imposition of fees on entities accessing the national registry in its litigation against the FTC, and the Tenth Circuit rejected those arguments. ATA is seeking review of the Tenth Circuit's decision before the Supreme Court. *Mainstream Mktg. Servs., Inc., et al.* v. *FTC*, 358 F.3d 1228 (10th Cir. 2004), petition for cert. filed, 72 U.S.L.W. 3726 (U.S. May 14, 2004) (No. 03–1552). Any response to those arguments is most appropriately left to that forum.

[6] *See, e.g.*, RH at 1; DF at 1.

[7] ATA at 5. *See also* MRS at 1; TB at 1; MM at 1; NMHC at 2.

[8] For example, according to NMHC, an FTC press release indicates that through March 2004, 52,000 entities accessed all or part of the registry, but as of December 2003, the agency received ''do-not-call'' complaints about 55,000 specific companies. NMHC suggests this showed ''widespread noncompliance'' with the existing regulations. NMHC at 2. Such speculation is based on a misunderstanding of the FTC statistics cited. Complaining consumers are reporting company names in a multitude of variations. As a hypothetical example, one complaint may be against a company called ''Calls 2 You,'' while another complaint may be against the same company but with the name entered as ''Calls To You.'' Thus, each specific name may not represent a different company engaged in telemarketing. Moreover, not all entities about which consumers complained are non-compliant. For example, companies calling only consumers with whom they

Continued

part of our law enforcement activities, we welcome any specific information that can be provided in this regard. The FTC is conducting non-public investigations of consumer complaints for violations of the fee provision as well as violations of the do-not-call provisions of the TSR, and will file law enforcement actions addressing such violations when appropriate.[9]

Other commenters suggest that the FTC should use fines obtained from enforcement actions to offset some of the fee increase.[10] They correctly note that the FTC can obtain civil penalties for violations of the TSR, including violations of the ''do-not-call'' provisions, of up to $11,000 per violation.[11] By statute, however, the FTC cannot keep any civil penalties it obtains in such law enforcement actions. Instead, all such civil penalties are deposited into the General Fund of the United States Treasury.[12] Accordingly, by law, any fines obtained from enforcement actions cannot be used to offset fees.

A few commenters assert that the FTC has provided insufficient information about how funds have been expended to date.[13] MPA inquires why enforcement costs should be so high, given the ''exceptional compliance'' by the industry with the ''do-not-call'' rules.[14] DMA claims that the fees should be used only to cover the costs to operate the registry. ''Combating fraud should be funded from the FTC appropriation just as it is for other consumer protection programs.''[15] ATA argues that ''the fees are not used solely to maintain and enforce the [do-not-call] rules.''[16]

Contrary to these commenters' assertions, the Commission has provided significant information about the basis for the fees it has raised to date, and has consistently and specifically limited the amount of fees to be collected to those needed to implement and enforce the ''do-not-call'' provisions of the Amended TSR. As stated in the Revised Fee NPRM, the amount of fees collected pursuant to this revised rule is intended to offset costs in the following three areas. First, funds are collected to operate the national registry. This operation includes items such as handling consumer registration and complaints, telemarketer access to the registry, state access to the registry, and the management and operation of law enforcement access to appropriate information. Second, funds are collected for law enforcement efforts, including identifying targets, coordinating domestic and international initiatives, challenging alleged violators, and consumer and business education efforts. These law enforcement efforts are a significant component of the total costs, given the large number of ongoing investigations currently being conducted by the agency, and the substantial effort necessary to thoroughly complete such investigations. Third, funds are collected to cover agency infrastructure and administration costs associated with the operation and enforcement of the registry, including information technology structural supports and distributed mission overhead support costs for staff and non-personnel expenses such as office space, utilities, and supplies.[17] ATA correctly notes that some of the costs set forth above will be used for improvements to the Consumer Sentinel system, which is a repository for all fraud-related complaints received by the FTC, and includes ''do-not-call'' related complaints. However, ATA and DMA are incorrect in stating that the fees raised are used to fund the FTC's fraud-related program.[18] To the contrary, the fees raised from entities accessing the national registry have been and will be used for enhancements to the agency's information technology infrastructure, enhancements that are essential to enable Consumer Sentinel to accommodate the ''do-not-call'' program. These enhancements include sorting, maintaining, and providing sufficient capacity for law enforcement agents from across the country to access the over 400,000 ''do-not-call'' complaints received to date, as well as the more than 62 million registered telephone numbers and the tens of thousands of records regarding companies that access the registry.[19]

In conclusion, the Commission adheres to its statutory authority in raising fees that are necessary to implement and enforce the ''do-not-call'' provisions of the Amended TSR. In an effort to raise the $18 million to offset costs the agency expects to incur in this Fiscal Year for those purposes, the Commission concludes that an increase in fees is necessary, as discussed below.

III. Small Business and Exempt Entity Access

In the Revised Fee NPRM, the Commission proposed to continue allowing all entities accessing the national registry to obtain the first five area codes of data for free. The Commission proposed allowing such free access ''to limit the burden placed on small businesses that only require access to a small portion of the national registry.'' 69 FR at 23703. The Commission noted that such a fee structure was consistent with the mandate of the Regulatory Flexibility Act, 5 U.S.C. 601, which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies should consider regulatory alternatives to minimize such impact. As stated in the Revised Fee NPRM, ''the Commission continues to believe that providing access to five area codes of data for free is an appropriate compromise between the goals of equitably and adequately funding the national registry, on one hand, and providing appropriate relief for small businesses, on the other.'' *Id.* In addition, the Commission noted that requiring a large number of entities to pay a small fee for access to five or fewer area codes from the national registry would place a significant burden on the registry, requiring the expenditure of even more resources to handle properly the additional payment transactions. *Id.*

A number of commenters oppose providing the first five area codes of data at no charge. Many noted that only 11 percent of all entities accessing the national registry currently pay the entire cost of the registry.[20] They maintain that

have an established business relationship or entities exempt from the TSR are not required to pay for access.

[9] *See, e.g., FTC* v. *National Consumer Council, et al.*, No. SACV04–0474 CJC (JXJx) (C.D. Cal., filed Apr. 23, 2004); *FTC* v. *Debt Mgmt. Found. Servs., Inc.,* No. 8:04CV–1674-T–17NSS (N.D. Fla., filed July 20, 2004).

[10] *See, e.g.*, IMC at 4; MH at 3; ARDA at 4.

[11] *See* 16 CFR 1.98.

[12] *See* Miscellaneous Receipts Act, 31 U.S.C. 3302.

[13] *See, e.g.*, NAR at 4–5; ARDA at 2; MPA at 1.

[14] MPA at 1.

[15] DMA at 3.

[16] ATA at 3.

[17] NAR claims that much of the agency's current costs exceed the agency's statutory authority, since they are related to ''maintenance'' of the registry and not ''implementation.'' NAR at 4. This semantic argument fails to take into account that the generally understood definition of ''implementation''—to carry out or accomplish a mission—includes maintenance.

[18] *See* ATA at 3; DMA at 3.

[19] *See* ''National Do Not Call Registry Celebrates One Year Anniversary,'' FTC Press Release dated June 24, 2004 (*http://www.ftc.gov/opa/2004/06/dncanny.htm*). In contrast, in 2003, the Consumer Sentinel system received over 500,000 complaints related to the FTC's entire mission, including complaints related to Identity Theft. *See* ''FTC Releases Top Ten Consumer Complaint Categories in 2003,'' FTC Press Release dated January 22, 2004 (http://www.ftc.gov/opa/2004/01/top10.htm).

[20] *See, e.g.*, Comerica at 1; ATA at 4.

larger companies should not be ''obligated to subsidize'' the operation of smaller companies or exempt organizations.[21] ''These [smaller] organizations derive benefit from access to the National Do-Not-Call Registry. They should be obligated either to pay the full access fee or some portion of the fee.'' [22] According to TCIM, those entities that do not pay ''place an unfair burden on the 6,000 who do pay for access. We believe that everyone who makes outbound telemarketing calls ought to pay their fair share of the registry's costs.'' [23] Others state that a nominal charge for five area codes is not overly burdensome to any business, regardless of size. ''The fact that there will be additional resources required on the part of the Registry to process additional payments, does not outweigh the need for equitable distribution of cost across all entities.'' [24]

In order to address what they consider to be the inequitable treatment of the current fee structure, some commenters suggest reducing the number of area codes provided for free. For example, IMC suggests reducing the number of free area codes from five to three. This would ''reduce the unfair impact of the current fee structure'' while not causing ''a financial hardship for the majority of companies whose costs would increase by less than $100 per year.'' [25] Others suggest that there should be a ''modest $100 flat fee on all entities who desire to subscribe to five area codes or fewer.'' [26] Finally, Cendant suggests that small businesses should pay some nominal fee, established under a sliding scale formula.[27]

On the other hand, many commenters support providing the first five area codes of data at no charge. They suggest that this will help ''encourage entrepreneurship in America.'' [28] NADA states: ''Removing the exemption would have a significant impact on our members and many other small and medium size businesses. * * * These businesses already have assumed significant training, systems and other compliance costs associated with the National DNC rules. * * * Imposing a fee for accessing the first five area codes would impose a disproportionate burden on small entities that already are struggling to comply with the ever-expanding list of federal requirements affecting their businesses.'' [29] Similarly, NAR cites information from the Small Business Administration's Office of Advocacy which shows that ''very small firms with fewer than 20 employees * * * spend 60 percent more per employee than larger firms to comply with federal regulations.'' [30]

Further, a number of commenters suggest that the Commission should do more to protect small businesses. CAR maintains that the fee increase will detrimentally affect small businesses located in highly populated areas ''with more than five area codes within a one hundred mile radius of one another.''[31] NNA suggests that the FTC should consider expanding the small business exemption, especially to cover small businesses that do business nationwide, such as niche publications, by allowing free access to any entity that meets the ''general definitions for small businesses codified under the Small Business Act and implemented by the Small Business Administration through its Office of Size Standards.''[32]

After considering all of the comments submitted in this proceeding, the Commission still believes it is important to provide small businesses with some relief from the burdens of complying with the ''do-not-call'' provisions of the Amended TSR. While the Commission recognizes that only a small percentage of the total number of entities accessing the national registry pay for that access, these figures also illustrate the large number of small businesses that would be adversely affected by a change in the number of area codes provided at no cost. In fact, over 57,000 entities have accessed five or fewer area codes of the national registry. Most of these entities—realtors, car dealers, community-based newspapers, and other small businesses—are precisely the types of businesses which the Regulatory Flexibility Act requires the agency to consider when adopting regulations. Moreover, the Commission finds significant the information submitted by commenters showing the disproportionate impact compliance with the ''do-not-call'' regulations may have on small businesses. In order to lessen that impact, the Commission believes that relief to such businesses is appropriate.

The Commission does not believe that the suggested alternatives for providing such relief would provide the same level of assistance to small businesses without imposing undue burdens that the current system does not impose. For example, the suggestion to charge a flat $100 fee on all entities accessing five area codes or less would result in tens of thousands of entities that access from one to two area codes of data to be required to pay more than the per area code amount paid by all other entities. In effect, this proposal would have an even greater disproportionate impact on those entities than if they were charged for each area code accessed. The suggestion to base the fees on the actual size of the entity requesting access would require all entities to submit sensitive data concerning annual income, number of employees, or other similar factors. It also would require the agency to develop an entirely new system to gather that information, maintain it in a proper manner, and investigate those claims to ensure proper compliance. As the Commission has previously stated, such a system ''would present greater administrative, technical, and legal costs and complexities than the Commission's current exemptive proposal, which does not require any proof or verification of that status.''[33] As a result, the Commission continues to believe that the most appropriate and effective method to provide relief to small businesses is to provide access to a certain number of area codes at no charge.

As for the exact number of area codes to provide at no charge, the comments presented have failed to persuade the Commission that any change in the current level of five free area codes is necessary or appropriate. The Commission recognizes that reducing the number of free area codes would result in slightly lower fees charged to the entities that must pay for access. At the same time, however, that would also result in increased costs to thousands of small businesses. On the other hand, the Commission also recognizes that some small businesses located in large

[21] *See, e.g.*, SLIC at 1; Comerica at 1; Cendant at 3–4; ATA at 4; TCIM at 2.

[22] SLIC at 1.

[23] TCIM at 2.

[24] Comerica at 1.

[25] IMC at 4. *See also* MH at 1 (reduce the number of free area codes to four); ARDA at 3 (reduce the number of free area codes to 2 or 1).

[26] ATA at 5. *See also* ARDA at 3. ATA maintains that this would give a $25 ''savings'' to those accessing five area codes.

[27] Cendant at 3–4. ''In establishing the fee formula, the Commission should consider financial factors of the entity such as income or average annual receipts, or the Commission could consider the average number of employees per business unit accessing the DNC list. * * * The sliding fee scale used by the Commission should be designed so that a business will not have to pay more than 2% of their income for access.'' *Id.*

[28] RH at 1. *See also* ACB at 1–2; NMHC at 1–2; NNA at 1–2; NADA at 1–2.

[29] NADA at 1–2. *See also* NNA at 1–2; CAR at 1.

[30] NAR at 4.

[31] CAR at 1 (citing New York City, New Jersey, Los Angeles, San Francisco, Pennsylvania, Washington, DC).

[32] NNA at 2. *See also* NAR at 1–2 (''many small businesses * * * often have the need to call a limited number of consumers who reside in a variety of states and/or area codes beyond their primary five area code local calling region'').

[33] 68 FR 16238, 16243 n.53.

metropolitan areas may need to make calls to more than five area codes. However, increasing the number of area codes provided at no charge would decrease the pool of paying entities, and further increase the fees paid by those entities. As a result, the Commission believes it has struck the appropriate balance, in an effort to relieve some of the burden faced by small businesses while still achieving the goal of covering the necessary costs to implement and enforce the ''do-not-call'' provisions of the Amended TSR, in allowing all entities to gain access to the first five area codes of data from the national registry at no cost.

In the Revised Fee NPRM, the Commission also proposed to continue allowing ''exempt'' organizations to obtain free access to the national registry.[34] The Commission stated its belief that any exempt entity, voluntarily accessing the national registry to avoid calling consumers who do not wish to receive telemarketing calls, should not be charged for such access. Charging such entities access fees, when they are under no legal obligation to comply with the ''do-not-call'' requirements of the TSR, may make them less likely to obtain access to the national registry in the future, resulting in an increase in unwanted calls to consumers. 69 FR at 23703.

A number of commenters support continuing allowing ''exempt'' entities to access the national registry at no charge, for the reasons set forth in the Revised Fee NPRM.[35] Others oppose the provision, claiming that such free access exacerbates the inequities in the system.[36] In fact, ATA claims that ''the costs of a regulation that seeks to address a problem should be paid by all entities that advance its objectives.''[37]

The Commission continues to believe that if it charged exempt entities for access to the national registry, many if not most of those entities would no longer seek access. As a result, registered consumers would receive an increase in the number of unwanted telephone solicitations. Exempt entities are, by definition, under no legal obligation to access the national registry. Many are outside the jurisdiction of the FTC. They are voluntarily accessing the registry in order to avoid calling consumers whose telephone numbers are registered. They should be encouraged to continue doing so, rather than be charged a fee for their efforts. The Commission will continue to allow all such exempt entities to access the national registry at no charge, after they have completed the required certification.

IV. Calculation of the Revised Fees

As previously stated, the Commission proposed in the Revised Fee NPRM to increase the fees charged to access the National Do Not Call Registry to $45 annually for each area code of data requested, with the maximum annual fee capped at $12,375 for entities accessing 280 area codes of data or more.[38] The Commission based this proposal on the total number of entities that accessed the registry from its opening through early March, 2004.[39] The Commission noted, however, that it would adjust the final revised fee to reflect the actual number of entities that had accessed the registry at the time of issuance of the Final Rule.[40]

From early March through June 1, 2004, a significant number of entities accessed the national registry for the first time. As of June 1, 2004, over 65,000 entities had accessed the national registry. More than 57,000 of those entities had accessed five or fewer area codes of data at no charge, and 1,100 ''exempt'' entities also accessed the registry at no charge. Thus, more than 7,100 entities have paid for access to the registry, with over 1,200 entities paying for access to the entire registry.

Based on these revised figures, and the need to raise $18 million of fees to offset costs it expects to incur in this Fiscal Year for implementing and enforcing the ''do-not-call'' provisions of the Amended TSR, the Commission is revising the fees to be charged for access to the national registry as follows. The fee charged for each area code of data will be $40 per year, with the first five area codes provided to each entity at no charge. ''Exempt'' organizations, as described in footnote 33, above, will continue to be allowed access to the national registry at no charge. The maximum amount that will be charged any single entity will be $11,000, which will be charged to any entity accessing 280 area codes of data or more. The fee charged to entities requesting access to additional area codes of data during the second six months of their annual period will be $20.

MPA suggests that to ''lessen the negative impact on the telemarketing industry, the Commission should consider phasing in any increase in fees over a period of time.''[41] In order to raise the appropriate fees to cover costs that are incurred in Fiscal Year 2004, which ends September 30, 2004, this suggestion is not possible. As a result, the Commission establishes September 1, 2004, as the effective date for this rule change, which is approximately one year following the opening of the national registry to entities engaged in telemarketing. Thus, the revised fees will be charged to all entities that renew their subscription account number after their first year's subscription has expired.

Beginning in August 2004, organizations accessing their accounts and the National Do Not Call Registry data at *www.telemarketing.donotcall.gov* will find additional information on the web site regarding the new fees and the expiration of their subscriptions. The web site will display the actual expiration date of an account upon login and will begin accepting subscription renewals on September 1, 2004. However, an organization may not renew its subscription any sooner than 30 days prior to its expiration. If an organization does not access the web site until after its subscription has

[34] The Original Fee Rule stated that ''there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required to under this Rule, 47 CFR 64.1200, or any other federal law.'' 16 CFR 310.8(c). Such ''exempt'' organizations include entities that engage in outbound telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys. They also include entities engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, pursuant to 16 CFR 310.4(b)(1)(iii)(B)(i) or (ii), and who do not access the national registry for any other purpose.

[35] *See, e.g.*, Comerica at 1; MH at 1–2; ACB at 2.

[36] *See, e.g.*, SLIC at 1.

[37] ATA at 6–7.

[38] The Commission proposed reducing the maximum number of area codes for which an entity would be charged from 300 to 280 to more closely correlate the charges for access to the registry with the number of active area codes in use in the country today. As the Commission stated in the Revised Fee NPRM, there are approximately 317 available area codes in the nation, virtually all of which include registered telephone numbers. However, approximately 35 of those area codes are not currently in active service, but are reserved for use in the future. (Telephone numbers from those area codes that have been added to the national registry include numbers to be activated in the future and numbers that are currently active for billing or other purposes.) As a result, there are currently approximately 280 active area codes, with additional area codes scheduled to become active in the future. *See* 69 FR at 23703 n.6. The Commission received no comments on this revision, and continues to believe that this change is appropriate.

[39] At that time, over 52,000 entities had accessed all or part of the information in the registry. More than 45,500 of those entities had accessed five or fewer area codes of data at no charge. Approximately 900 ''exempt'' entities had accessed the registry, also at no charge. As a result, approximately 6,000 entities had paid for access to the registry, with slightly over 1,100 entities paying for access to the entire registry. *See* 69 FR at 23702.

[40] *Id.* at 23703 n.5.

[41] MPA at 1.

expired, it will be prompted to renew the subscription at that time.

V. Paperwork Reduction Act

The proposed revised fee provision does not create any new recordkeeping, reporting, or third-party disclosure requirements. However, the Commission now has data based on the operation of the National Do Not Call Registry indicating that an estimated 65,000 entities will access the registry each year. The Commission's staff has increased its estimate of the total paperwork burden accordingly, and has notified the Office of Management and Budget (''OMB'') of the resulting minor change in burden hours to the existing clearance, OMB Control No. 3084–0097.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires the agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with its proposed rule, and a Final Regulatory Flexibility Analysis (''FRFA'') with its final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As explained in the Revised Fee NPRM and this Statement, the Commission does not expect that its Final Amended Fee Rule will have the threshold impact on small entities. As discussed above, this Amended Rule specifically charges no fee for access to data included in the registry from one to five area codes. As a result, the Commission anticipates that many small businesses will be able to access the national registry without having to pay any annual fee. Thus, it is unlikely that there will be a significant burden on small businesses resulting from the adoption of the proposed revised fees. Nonetheless, the Commission published an IRFA with the Revised Fee NPRM, and is also publishing a FRFA with its Final Amended Fee Rule below, in the interest of further explaining its determination, even though the Commission continues to believe that it is not required to publish such analyses.

A. Reasons for Consideration of Agency Action

The Amended Final Fee Rule has been considered and adopted pursuant to the requirements of the Implementation Act and the 2004 Appropriations Act, which authorize the Commission to collect fees sufficient to implement and enforce the ''do-not-call'' provisions of the Amended TSR.

B. Statement of Objectives and Legal Basis

As explained above, the objective of the Amended Final Fee Rule is to collect sufficient fees from entities that must access the National Do Not Call Registry. The legal authority for this Rule is the 2004 Appropriations Act, the Implementation Act, and the Telemarketing Act.

C. Description of Small Entities to Which the Rule Will Apply

The Small Business Administration has determined that ''telemarketing bureaus'' with $6 million or less in annual receipts qualify as small businesses.[42] Similar standards, *i.e.,* $6 million or less in annual receipts, apply for many retail businesses that may be ''sellers'' and subject to the revised fee provisions set forth in this Amended Final Rule. In addition, there may be other types of businesses, other than retail establishments, that would be ''sellers'' subject to this rule.

As described in Section IV, above, to date more than 57,000 entities have accessed five or fewer area codes of data from the national registry at no charge. While not all of these entities may qualify as small businesses, and some small businesses may be required to purchase access to more than five area codes of data, the Commission believes that this is the best estimate of the number of small entities that will be subject to this Amended Final Rule. In any event, as explained elsewhere in this Statement, the Commission believes that, to the extent the Amended Final Fee Rule has an economic impact on small business, the Commission has adopted an approach that minimizes that impact to ensure that it is not substantial, while fulfilling the legal mandate of the Implementation Act and 2004 Appropriations Act to ensure that the telemarketing industry supports the cost of the National Do Not Call Registry.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The information collection activities at issue in this Amended Final Rule consist principally of the requirement that firms, regardless of size, that access the national registry submit minimal identifying and payment information, which is necessary for the agency to collect the required fees. The cost impact of that requirement and the labor or professional expertise required for compliance with that requirement were discussed in Section V of the Revised Fee NPRM.[43]

As for compliance requirements, small and large entities subject to the Amended Fee Rule will pay the same fees to obtain access to the National Do Not Call Registry in order to reconcile their calling lists with the phone numbers maintained in the national registry. As noted earlier, however, compliance costs for small entities are not anticipated to have a significant impact on small entities, to the extent the Commission believes that compliance costs for those entities will be largely minimized by their ability to obtain data for up to five area codes at no charge.

E. Duplication With Other Federal Rules

None.

F. Discussion of Significant Alternatives

The Commission discussed the proposed alternatives in Section III, above.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

VII. Final Rule

■ Accordingly, for the reasons set forth above, the Commission hereby amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

■ 2. Revise § 310.8(c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $40 per area code of data accessed, up to a maximum of $11,000; *provided, however,* that there shall be no charge for the first five area codes of data accessed by any person, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry,

[42] *See* 13 CFR 121.201.

[43] *See* 69 FR at 23704.

including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay $40 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay $20 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

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

Appendix—List of Acronyms for Commenters to the TSR Revised Fee Rule Proposal

Commenter	Acronym
American Insurance Association	AIA
American Resort Development Association.	ARDA
American Teleservices Association.	ATA
America's Community Bankers	ACB
Bernard, Ted	TB
California Association of Realtors	CAR
Cendant Corporation	Cendant
Comerica Inc.	Comerica
Direct Marketing Association, Inc.	DMA
Fried, Dorigen	DF
Hedke, Reasha	RH
Heinemann, Mike	MH
Hughes, Roberta	RH2
Infocision Management Corporation, Inc.	IMC
Magazine Publishers of America	MPA
Marrou, Marianne	MM
Midwest Readers Service	MRS
National Association of Realtors	NAR
National Automobile Dealers Association.	NADA
National Multi Housing Council	NMHC
National Newspaper Association	NNA
ORC ProTel	OPT
RELO	RELO
Stonebridge Life Insurance Company.	SLIC
TCIM Services	TCIM

[FR Doc. 04–17330 Filed 7–29–04; 8:45 am]

BILLING CODE 6750–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 408

[Regulations No. 8]

RIN 0960–AF72

Special Benefits for Certain World War II Veterans; Reporting Requirements, Suspension and Termination Events, Overpayments and Underpayments, Administrative Review Process, Claimant Representation, and Federal Administration of State Recognition Payments; Corrections

AGENCY: Social Security Administration.

ACTION: Correcting amendments.

SUMMARY: The Social Security Administration published a document in the **Federal Register** on May 10, 2004 (69 FR 25950), revising our rules dealing with claims for Special Veterans Benefits under title VIII of the Social Security Act. That document incorrectly designated the final four paragraphs in § 408.1003. This document corrects the final regulations by redesignating those paragraphs.

DATES: Effective on June 9, 2004.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance Specialist, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020, or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: The final rules that are the subject of this correction set forth six new subparts in part 408 (Special Benefits for Certain World War II Veterans). The six new subparts dealt with the following topics: the events you must report to us after you apply for SVB, the circumstances that will affect your SVB entitlement, how we handle overpayments and underpayments under the SVB program, how the administrative review process works, your right to appoint someone to represent you in your dealings with us, and administration agreements we may enter into with a State under which we will pay supplemental recognition payments to you on the State's behalf. On page 25963 of the document we published in the **Federal Register** of May 10, 2004, we incorrectly designated the final four paragraphs in § 408.1003 as paragraphs (e) through (h).

List of Subjects in 20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Special veterans benefits, Veterans.

■ Accordingly, 20 CFR part 408 is corrected by making the following correcting amendment:

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

■ 1. The authority citation for subpart J continues to read as follows:

Authority: Secs. 702(a)(5) and 809 of the Social Security Act (42 U.S.C. 902(a)(5) and 1009).

§ 408.1003 [Amended]

■ 2. In § 408.1003, redesignate the final four paragraphs as paragraphs (g) through (j).

Martin Sussman,

Regulations Officer, Social Security Administration.

[FR Doc. 04–17332 Filed 7–29–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

Indian Reservation Roads Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of public information and education meetings on Indian Reservation Roads Program final rule.

SUMMARY: We are announcing public meetings to provide information and education on the contents of each subpart of the final rule for the Indian Reservation Roads Program. The final rule is the result of negotiated rulemaking between tribal and Federal representatives under the Transportation Equity Act for 21st Century. The final rule establishes policies and procedures governing the Indian Reservation Roads Program and provides guidance for planning, designing, constructing, and maintaining transportation facilities. It also expands transportation activities available to tribes and tribal

organizations. The final rule also establishes a funding distribution methodology called the Tribal Transportation Allocation Methodology (TTAM).

FOR FURTHER INFORMATION CONTACT: LeRoy Gisha, Chief, Division of Transportation, Bureau of Indian Affairs, 1951 Constitution, NW., MS–320–SIB, Washington, DC 20240, telephone (202) 513–7711 or fax (202) 208–4696.

SUPPLEMENTARY INFORMATION: The public information and education meetings are not public hearings and are not public comment meetings. The meetings will consist of presentations on each part of the final rule with time for clarification questions at the end of the meeting. We will provide information packets on the final rule at the meeting. For more information on the location of the meetings visit the Federal Highway Administration, Federal Lands Highway Web site at: *http://www.fhwa.dot.gov/flh.* The meetings will begin at 8 a.m. and end at 4:30 p.m. local time and will be held on the dates and at the locations listed below:

Meeting date	Location
August 10, 2004	Oklahoma City, OK
August 12, 2004	Albuquerque, NM
August 24, 2004	Las Vegas, NV
August 26, 2004	Seattle, WA
September 8, 2004 ...	Anchorage, AK
September 10, 2004	Fairbanks, AK
September 21, 2004	Minneapolis, MN
September 23, 2004	Nashville, TN

Meeting Agenda (all times local)

8 a.m.–8:15 a.m. Welcome, Introductions, Ground Rules.

8:15 a.m.–8:30 a.m. Opening and Overview.

8:30 a.m.–11:45 a.m. Preamble.

Subpart A—Policies, Applicability, and Definitions.

Subpart B—IRR Program Policy and Eligibility.

Subpart D—Planning, Design, and Construction of IRR Program Facilities.

11:45 a.m.–12:45 p.m. Lunch.

12:45 p.m.–4 p.m.

Subpart E—Service Delivery For IRR.

Subpart F—Program Oversight and Accountability.

Subpart G—BIA Road Maintenance.

Subpart H—Miscellaneous Provisions.

Subpart C—IRR Program Funding.

4 p.m.–4:30 p.m. Clarification Questions.

4:30 p.m. Adjourn.

Dated: July 27, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–17418 Filed 7–29–04; 8:45 am]

BILLING CODE 4310–LH–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 602

[TD 9145]

RIN 1545–BD29

Entry of Taxable Fuel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the tax on the entry of taxable fuel into the United States. These regulations affect enterers of taxable fuel, other importers of record, and certain sureties. The text of the temporary regulations also serves as the text of the proposed regulations (REG–120616–03) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective September 28, 2004.

Applicability Dates: For dates of applicability, see §§ 48.4081–1T(b) and 48.4081–3T(c)(ii) and (iv).

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1897. Responses to this collection of information are required to obtain a tax benefit.

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

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Present Law

Section 4081(a)(1)(A)(iii) of the Internal Revenue Code (Code) imposes a tax on the entry into the United States of taxable fuel. Taxable fuel means gasoline, diesel fuel, and kerosene. Existing regulations provide that the enterer is liable for the tax imposed on the entry of taxable fuel.

The regulations currently define the term *enterer* as generally meaning the importer of record (under customs law) with respect to the taxable fuel. However, if the importer of record is acting as an agent (for example, the importer of record is a customs broker engaged by the owner of the taxable fuel), the person for whom the agent is acting is the enterer.

The regulations require an enterer to be registered by the IRS. The IRS will register an applicant only if the IRS determines that the applicant meets several tests, including the adequate security test. An applicant meets the adequate security test only if the IRS determines that the applicant has both adequate financial resources and a satisfactory tax history, or the applicant gives the IRS a bond.

Section 142.4 of the Customs regulations (19 CFR) provides that merchandise shall not be released from Customs custody unless a bond on Customs Form 301, Customs Bond, has been filed. This bond, which is filed by the importer of record, secures the payment of any duty, tax, or charge, and compliance with Customs laws and regulations. Section 141.3 of the Customs regulations provides that the importer's liability for duties includes liability for any internal revenue taxes which attach upon the importation of merchandise, unless otherwise provided by law or regulation. Also, § 113.62(a)(1)(ii) of the Customs regulations provides, in part, that if merchandise is imported and released from Customs custody, the obligors on

a Customs bond (principal and surety, jointly and severally) agree to pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by the bond.

Reason for Change

The IRS has found that abusive situations exist with regard to the entry of taxable fuel into the United States. For example, some enterers are not registered and are not paying the tax on their fuel entries. This not only gives noncompliant enterers a competitive advantage over their compliant competitors, but it also deprives the United States Treasury of revenue intended for the Highway Trust Fund.

When Congress enacted the present fuel tax regime, it noted that the Treasury Department is permitted ''to prescribe rules and administrative procedures for determining liability for payment of tax.'' H.R. Conf. Rep. No. 101–964, at 1052 (1990).

Explanation of Provisions

Pursuant to these temporary regulations, the importer of record (under Customs law) is jointly and severally liable with the enterer for the tax if the importer of record is not the enterer of the taxable fuel (that is, the importer of record is a customs broker engaged by the enterer) and the enterer is not a taxable fuel registrant. Thus, an importer of record engaged by an enterer and seeking assurance that it will not be jointly and severally liable for the enterer's tax liability should verify that the enterer is registered by the IRS. This temporary regulation is similar to § 48.4081–2(c)(2) of the regulations, which provides that a terminal operator generally is jointly and severally liable for the tax imposed on the removal of taxable fuel from the rack if the terminal operator allows an unregistered position holder to operate in its terminal.

Customs laws and regulations provide that the importer of record is liable for any duties or taxes that attach upon the importation of merchandise. Therefore, an importer of record's Customs bond secures not only the payment of duties, but also the payment of taxes that are imposed on the entry of merchandise, including taxable fuel. Consequently, under existing law, a surety could be compelled to meet a demand on a Customs bond if the excise tax on the entry of taxable fuel is not paid when due. However, the IRS will not charge a surety bond for this tax until the effective date of these temporary regulations. It should be noted, however, that under these temporary regulations the Customs bond posted for the entry of taxable fuel will not be charged for the section 4081 tax if the enterer is a taxable fuel registrant.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS, the Treasury Department, and the Bureau of Customs and Border Protection, Department of Homeland Security, participated in their development.

List of Subjects

26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and Recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 48 and 602 are amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 48 continues to read, in part, as follows:

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

■ **Par. 2.** In § 48.4081–1, paragraph (b) is amended by adding a new sentence to the end of the definition of enterer to read as follows:

§ 48.4081–1 Taxable fuel; definitions.

* * * * *

(b) * * * This definition of enterer does not apply with respect to an entry if the definition of enterer in § 48.4081–1T(b) is applicable with respect to that entry.

* * * * *

■ **Par. 3.** Section 48.4081–1T is added to read as follows:

§ 48.4081–1T Taxable fuel; definitions (temporary).

(a) [Reserved]. For further guidance, see § 48.4081–1(a).

(b) *Definitions.*

Definitions of approved terminal or refinery through diesel-powered train [Reserved].

Enterer generally means, in the case of an entry of taxable fuel on or after September 28, 2004, the importer of record (under customs law) with respect to the taxable fuel, except that—

(1) If the importer of record is a customs broker engaged by the owner of the taxable fuel, the person for whom the broker is acting is the enterer; and

(2) If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at the time it is brought into the United States is the enterer.

Definition of entry through (f)(2) [Reserved]. For further guidance, see § 48.4081–1(b) definition of entry through (f)(2).

■ **Par. 4.** In § 48.4081–3, revise paragraph (c)(2) to read as follows:

§ 48.4081–3 Taxable fuel; taxable events other than removal at the terminal rack.

* * * * *

(c) * * *

(2) *Liability for tax*—(i) *In general.* The enterer is liable for the tax imposed under paragraph (c)(1) of this section.

(ii) through (iv) For further guidance, see § 48.4081–3T(c)(2)(ii) through (iv).

* * * * *

■ **Par. 5.** Section 48.4081–3T is added to read as follows:

§ 48.4081–3T Taxable fuel; taxable events other than removal at the terminal rack (temporary).

(a) through (c)(2)(i) [Reserved]. For further guidance, see § 48.4081–3(a) through (c)(2)(i).

(c)(2)(ii) *Joint and several liability of the importer of record.* In the case of an entry of taxable fuel on or after September 28, 2004, the importer of record with respect to the taxable fuel is jointly and severally liable with the enterer for the tax imposed under § 48.4081–3(c)(1) if—

(A) The importer of record is not the enterer of the taxable fuel; and

(B) The enterer is not a taxable fuel registrant.

(iii) *Conditions for avoidance of liability.* The importer of record is not

liable for the tax under paragraph (c)(2)(ii) of this section if, at the time of the entry, the importer of record—

(A) Has an unexpired notification certificate (as described in § 48.4081–5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

(iv) *Customs bond.* In the case of an entry of taxable fuel on or after September 28, 2004, the Customs bond posted with respect to the importation of the fuel will not be charged for the tax imposed on the entry of the fuel if the enterer is a taxable fuel registrant. A surety bond will not be charged for the tax imposed on the entry of the fuel covered by the bond, if at the time of entry, the surety—

(A) Has an unexpired notification certificate (as described in § 48.4081–5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

(d) through (j) [Reserved]. For further guidance, see § 48.4081–3(d) through (j).

§ 48.4081–5 [Amended]

■ **Par. 6.** Section 48.4081–5 is amended as follows:

■ a. Paragraph (a) is amended by removing the language ''48.4081–2(c)(3),'' and by adding ''48.4081–2(c)(2)(ii), 48.4081–3T(c)(2)(iii) and (iv),'' in its place.

■ b. Paragraph (b)(2) is amended by removing the language ''gasoline registrant'' and adding ''taxable fuel registrant'' in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 7.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 8.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
48.4081–3T	1545–1897
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 14, 2004.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–17449 Filed 7–29–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 175

[USCG–2000–8589]

RIN 1625–AA62 (Formerly 2115–AG04)

Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts, with two changes, the interim rule published on June 24, 2002, which required certain children under the age of thirteen aboard recreational vessels to wear a personal flotation device (PFD). It changes the requirement from ''each child'' under the age of thirteen, to ''certain children'' under the age of thirteen, and addresses in more detail when Federal or State requirements apply. These changes clarify the Coast Guard's enforcement of existing State standards. This final rule is intended to reduce the number of children who drown because they are not wearing PFDs.

DATES: This final rule is effective August 30, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket are part of docket USCG–2000–8589 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may obtain a copy of this rule by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web site for the Office of Boating Safety at *http://www.uscgboating.org*, or the Internet site for the Docket Management Facility at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this Final Rule, call Carlton Perry, U.S. Coast Guard, telephone: 202–267–0979. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory History

This rulemaking began with our publication of two notices requesting comment, both titled ''Recreational Safety-Federal Requirements for Wearing Personal Flotation Devices,'' in the **Federal Register**. We published the first notice in the **Federal Register** on September 25, 1997, CGD 97–059 [62 FR 50280]. It included questions about potential PFD-wearing requirements for recreational boaters. We extended the comment period in a notice published in the **Federal Register** on March 20, 1998, CGD 97–059 [63 FR 13586]. We published another notice, focusing on certain children, riders on personal watercraft, and persons being towed behind recreational vessels, in the **Federal Register** on October 5, 1999, USCG–1999–6219 [64 FR 53971].

We received approximately 600 comments for the first notice and another 600 comments for the second notice. We developed a Notice of Proposed Rulemaking (NPRM), after considering all the comments, proposing Federal requirements for certain children to wear personal flotation devices (PFDs).

We published an NPRM titled ''Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels'' in the **Federal Register** on May 1, 2001 [66 FR 21717]. The NPRM proposed that children under the age of thirteen be required to wear PFDs when they are above decks aboard recreational vessels that are under way. The NPRM discussed the approximately 1,200 comments that we received in response to the two requests for comments. No public hearing was requested and none was held.

By the close of the NPRM comment period on August 30, 2001, we had received 46 more comments. Of those, 22 comments supported the rule as proposed in the NPRM, 8 supported it with changes, and 16 opposed it. Most comments that supported the rule as proposed in the NPRM stated that it would be a positive step toward reducing drownings and toward uniform requirements across the States. Opposing comments expressed concern that Federal action would interfere with individual State efforts to mandate the use of PFDs.

After summarizing the comments received in response to the NPRM, we

consulted the National Boating Safety Advisory Council (NBSAC) at its meeting in October 2001 regarding those comments and recommendations. NBSAC recommended that we proceed to publish the Final Rule, as proposed in the NPRM.

We published a Final Rule in the **Federal Register** on February 27, 2002 [67 FR 8881]. The Final Rule discussed the 46 comments that we received in response to the NPRM. It required children under age 13 to wear PFDs when they are above decks aboard recreational vessels that are under way. The Final Rule had three distinct requirements: (1) For States without their own statutes or rules on ages, it established a Federal requirement complete in itself; (2) for States with statutes or rules on age only, provided for enforcing those statutes or rules in whole; and (3) for States with their own statutes or rules on age that include other qualifications, such as lengths of vessels, it provided for enforcing the age limits of those statutes or rules but not the other qualifications.

We published a Notice of Withdrawal in the **Federal Register** on March 27, 2002 [67 FR 14645], after a State Boating Law Administrator alerted us to a potential conflict between our own rule and States' qualified statutes or rules. The same conflict was noticed as we prepared training guidance for the Coast Guard boarding officers. Under the Final Rule as published, the Coast Guard's boarding officers would have enforced the age requirement on all recreational vessels regardless of any State qualifiers. At the same time and on the same waters, States' boarding officers would have only been enforcing the age requirement on certain vessels, as determined by the State regulation.

On June 24, 2002, we published in the **Federal Register** [66 FR 21717] an Interim Rule with a request for comments titled ''Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels.'' Under the Interim Rule, the Coast Guard established a requirement for children under 13 to wear a PFD in those States without any requirement. It also provided for the Coast Guard to enforce each State's statute or rule in its entirety, including any qualifications. Thus, Coast Guard boarding officers will enforce the same requirements for wearing a PFD as do State boarding officers. We received 12 comments concerning the Interim Rule.

The Interim Rule provided for enforcing existing State statutes and rules, and added authority for Coast Guard boarding officers to support those efforts. Further, we encouraged other States to undertake their own such efforts without imposing a Federal mandate. Four of the 12 comments supported the rulemaking but recommended a different age limit. However, the Coast Guard's limit of ''under 13'' is supported by recommendations from NBSAC and the National Transportation Safety Board.

Discussion of Comments and Changes

The Coast Guard received 12 comments in response to the Interim Rule. These came from: 4 recreational boaters; 4 governmental agencies; 1 boating organization; and 3 safety or medical organizations.

Two comments supported the rulemaking as is, stating that while education concerning PFD use is often effective, this rulemaking would provide additional incentive for parents to ensure their children are wearing PFDs.

Six comments opposed the rulemaking, stating that the Federal government should not be involved in the decision concerning which children must wear PFDs. A comment from a Virginia legislative delegate stated that the Commonwealth's legislature had rejected such a rule twice. The Ohio Waterways Safety Council stated that there are more important boating safety issues and that the States were already successfully addressing the PFD matter.

The Coast Guard did consider exempting selected States from the Federal regulation. However, the Coast Guard has decided that in order to maintain national uniformity, a Federal requirement should apply on waters subject to the concurrent jurisdiction of the United States and the State where that State has not established any requirement for children to wear an appropriate Coast Guard-approved PFD while aboard a recreational vessel.

Four comments supported the rulemaking, but with changes. The American Academy of Pediatrics requested that the age be changed to 18 and under, and that the Federal government set the minimum safety standard while allowing States to choose whether to exceed the Federal requirements. A comment from an individual requested that the age limit be lowered to 9 years old because a child above that age who is around boats would likely know how to swim. If a child does not know how to swim, the parent or guardian, not the government, should take responsibility for the child's safety, including whether the child should wear a PFD. The comment also suggested fines for those violating the Federal regulation requiring children 9 and under to wear PFDs.

As discussed in the Interim Rule, the Coast Guard has decided to retain the Federal requirement that children under 13 years of age must wear a PFD. A maximum civil penalty of $1,100 could be assessed for a violation of the Federal requirement or of a State requirement being enforced under the Federal regulation.

Two comments from the State of Wisconsin's Department of Natural Resources asked that the regulation language in § 175.25 be changed from ''each child'' to ''certain children'' to avoid confusion when applying State requirements. The regulation would read, ''* * * any State that has established by statute or rule a requirement under which certain children must wear an appropriate PFD.''

The Coast Guard agrees and has revised § 175.25 to reflect the enforcement of State requirements requiring certain children (instead of each child) to wear personal flotation devices.

The Coast Guard further expanded this section to address in more detail when Federal requirements apply and when State requirements apply. This change clarifies exactly when the Coast Guard will enforce existing State standards.

Regulatory Evaluation

The analyses we conducted in connection with the interim rule all remain unchanged, and the Analysis Documentation prepared for the interim rule remains in the docket. This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). Please consult the Regulatory Evaluation provided in the interim rule for further information.

List of Subjects in 33 CFR Part 175

Marine safety.

■ Accordingly, the interim rule amending 33 CFR part 175 which was published at 67 FR 42488 on June 24, 2002, is adopted as a final rule with the following change:

PART 175—EQUIPMENT REQUIREMENTS

■ 1. The authority citation for part 175 is revised to read as follows:

Authority: 46 U.S.C. 4302; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 175.25 to subpart B, to read as follows:

§ 175.25 Enforcement of State requirements for children to wear personal flotation devices.

(a) This section applies to operators of recreational vessels on waters subject to the jurisdiction of any State that has established by statute a requirement for children of a certain age to wear an appropriate PFD approved by the Coast Guard, while aboard a recreational vessel.

(b) If the applicable State statute establishes any requirement for children of a certain age to wear an appropriate PFD approved by the Coast Guard, then that requirement applies on the waters subject to the State's jurisdiction instead of the requirement provided in § 175.15(c) of this part.

Dated: June 10, 2004.

David S. Belz,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 04–17411 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Department of Air Force, Wisconsin Air National Guard Danger Zone Under Restricted Air Space R–6903, Lake Michigan, Sheboygan County, WI

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending its regulations which establish a Danger Zone at an existing Military Exercise Area located off the Wisconsin shoreline in Lake Michigan from Manitowoc to Port Washington, as shown on NOAA Chart 14901 (1999). These regulations will enable the Wisconsin Air National Guard (WiANG) to advise fishermen and mariners in the vicinity when a military exercise is scheduled and thus ensure their safety by alerting them of temporary, potentially hazardous conditions which may exist as a result.

DATES: *Effective Date:* August 30, 2004.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–CO, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne M. Barry, Headquarters Regulatory Branch, Washington, DC, at (202) 761–7763, or Ms. Maria T. Valencia, Corps of Engineers, St. Paul District, Regulatory Branch, at (651) 290–5364.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the restricted area regulations in 33 CFR part 334 by adding § 334.145 which identifies the existing danger zone in Lake Michigan offshore from Manitowoc and Sheboygan Counties in Wisconsin, as shown on NOAA Chart 14901 (1999). By correspondence dated 3 July 2001, the WiANG has requested the Corps of Engineers to re-identify this danger zone. The area is located under Restricted Air Space R–6903 which is shown on existing aeronautical charts. This amendment of the regulation will allow WiANG to request that the Coast Guard issue a Notice to Mariners when exercises are planned and thus better inform fishermen and mariners of military activities in this area. WiANG intends to continue to schedule this area for use in a similar manner as it has been used during the past 20 years. Historical activity includes, but is not limited to, inert air-to-air and air-to-surface delivery, defensive countermeasures training and sonar buoy drops.

Procedural Requirements

a. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the identification of this danger zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The St. Paul District has prepared an Environmental Assessment (EA) for this action. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps has concluded that this regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an Environmental Impact Statement is not required. The EA may be reviewed at the St. Paul District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either section 202 or section 205 of the Unfunded Mandates Act. We have also found, under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

e. Submission to Congress and the General Accounting Office

Pursuant to section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this Rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This Rule is not a major Rule within the meaning of section 804(2) of the Administrative Procedures Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Section 334.845 is added to read as follows:

§ 334.845 Wisconsin Air National Guard, Volk Field military exercise area located in Lake Michigan offshore from Manitowoc and Sheboygan Counties; Danger Zone.

(a) *The area.* (1) The waters within an area beginning at a point at latitude 43°19′00″ N., longitude 87°41′00″ W.; to latitude 44°05′30″ N., longitude 87°29′45″ W.; to latitude 44°02′00″ N., longitude 87°02′30″ W.; to latitude 43°15′30″ N., longitude 87°14′00″ W.; thence to the point of beginning, as shown on NOAA Chart 14901 (1999) and existing aeronautical charts.

(b) *The regulation.* (1) During specific, infrequent periods when Military exercises will be conducted, as promulgated in the Local Notice to mariners published by the United States Coast Guard (USCG), all vessels entering the danger zone are advised to proceed across the area by the most direct route and without unnecessary delay. (2) During specific, infrequent periods when Military exercises will be conducted, as promulgated in the Local Notice to mariners published by the USCG , no vessel or craft of any size shall lie-to or anchor in the danger zone, other than a vessel operated by or for the USCG, or any other authorized agency.

(c) *Normal use.* At all other times, nothing in this regulation shall prohibit any lawful uses of this area.

(d) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer, VOLK Field, WI, and/or persons or agencies as he/she may designate.

Dated: June 28, 2004.

Michael B. White,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 04–17352 Filed 7–29–04; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 58

[OAR–2003–0229; FRL–7794–1]

RIN 2060–AM02

National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In *American Trucking Associations* v. *EPA,* 175 F. 3d 1027 (D.C. Cir. 1999), the court vacated the PM_{10} national ambient air quality standards (NAAQS) that EPA adopted in 1997. Today's action removes the vacated 1997 PM_{10} standards and related requirements from the Code of Federal Regulations (CFR).

DATES: This rule is effective on July 30, 2004.

ADDRESSES: The EPA does not seek comment on this final rule. EPA has established an official public docket for this action under Docket ID No. OAR–2003–0229. The official public docket consists of the documents specifically referenced in this action.

The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air Docket is (202) 566–1742.

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 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 identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: Eric O. Ginsburg, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C304–02), Research Triangle Park, NC 27711; e-mail *Ginsburg.Eric@epa.gov*; telephone (919) 541–0877; fax (919) 541–4511.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1997 Revision of the PM NAAQS

On July 18, 1997, EPA promulgated revisions to the primary and secondary NAAQS for particulate matter (PM) (62 FR 38652), revising the PM NAAQS in several respects. New standards were added, using $PM_{2.5}$ (defined as particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (μm)) as the indicator for standards adopted for the purpose of regulating fine particles, and continuing to use PM_{10} (defined as particles with an aerodynamic diameter less than or equal to a nominal 10 μm) as the indicator for standards adopted for the purpose of regulating coarse-fraction particles (referring to those particles with an aerodynamic diameter less than or equal to a nominal 10 μm but greater than 2.5 μm). The 1997 annual PM_{10} standard used the same form as the pre-existing annual PM_{10} standard adopted in 1987, whereas the 1997 24-hour PM_{10} standard incorporated a new statistical form, based on the 99th percentile of 24-hour PM_{10} concentrations at each monitor in an area. EPA also adopted various requirements related to the 1997 PM_{10} standards such as new measurement methods, a new attainment test, and air quality monitoring schedules.

At that time, EPA determined that the pre-existing 1987 PM_{10} standards should remain in place and continue to apply in order to provide for an effective transition to the 1997 PM_{10} standards. 62 FR at 38701. To this end, EPA adopted a regulation setting forth criteria under which the pre-existing PM_{10} standards would cease to apply. See 40 CFR 50.6(d), 62 FR at 38711.

B. Judicial Vacatur of the 1997 PM_{10} Standards

Following promulgation of the 1997 PM NAAQS, numerous petitions for review of the PM standards were filed in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). These petitions were consolidated in *American Trucking Associations, Inc. et al.*, v. *EPA* and the court issued its initial opinion on May 14, 1999. *American Trucking Associations, Inc. et al.*, v. *Environmental Protection Agency,* 175 F.3d 1027 (D.C. Cir. 1999), rehearing granted in part and denied in part, 195 F.3d 4 (D.C. Cir. 1999), affirmed in part and reversed in part, *Whitman* v. *American Trucking Associations, Inc. et al.*, 121 S.Ct 903 (2001); see also *American Trucking Associations* v. *EPA,* 283 F.3d 355 (D.C. Cir. 2002) (denying all remaining petitions for

review following remand from United States Supreme Court). In part, although the court found ''ample support'' for EPA's decision to regulate coarse-fraction particles, it vacated the 1997 PM_{10} standards on the basis of PM_{10} being a ''poorly matched indicator for coarse particulate pollution'' because PM_{10} includes fine particles. 175 F. 3d at 1054–55. Pursuant to the D.C. Circuit's decision, EPA deleted 40 CFR 50.6(d), the regulatory provision controlling the transition from the pre-existing 1987 PM_{10} standards to the 1997 PM_{10} standards. 65 FR 80776 (December 22, 2000). The pre-existing 1987 PM_{10} standards remained in place. *Id.* at 80777.

The above discussion is presented solely to provide context for today's action. EPA is not reopening, reconsidering, or otherwise reevaluating the appropriateness of any of these previous actions in today's notice.

II. Changes to the Regulation

Today's action removes from the CFR the PM_{10} standards adopted in 1997 contained in 40 CFR 50.7(a)(2). These are the annual and 24-hour PM_{10} standards and the associated new reference measurement method (contained in Appendix M). EPA is also removing 40 CFR 50.7(d) and (e), which includes the attainment tests for the PM_{10} annual and 24-hour standards adopted in 1997 (included in Appendix N). Consistent with these changes, we are also removing Appendix M in its entirety and revising Appendix N to remove any provisions that relate to the 1997 PM_{10} standards. In addition, EPA is amending 40 CFR 50.3 (which specifies reference measurement conditions) to remove language that extended the scope of its applicability to the 1997 PM_{10} standards.

The EPA is also making conforming changes to the titles of 40 CFR 50.7 and Appendix N to clarify that these sections are now applicable solely to $PM_{2.5}$. Similarly, we are changing the title of Appendix K to clarify that it is applicable solely to PM_{10}.

Because the form of the pre-existing 1987 PM_{10} standards necessitated a different air quality monitoring schedule from that required for the vacated standards, EPA is also replacing § 58.13(d) with relevant portions of the ''long-term monitoring selective sampling schedule'' previously found at 40 CFR 58.13(d)(2) (July 1, 1996). Because the PM_{10} monitoring networks are now fully deployed, EPA is not restoring those provisions pertaining to their initial implementation.

Although we are reprinting certain language from the 1997 rule in today's amendment, we are doing so only to assure clarity and grammatical correctness after deletion of the vacated text. We are not reopening, reconsidering, or otherwise reassessing any of this reprinted language.

III. Issuance as Final Rule

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),[1] provides that when an agency for good cause finds that notice and public comment procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this rule is ministerial and non-discretionary, amending the regulations to reflect the court's order vacating the 1997 PM_{10} standards. The rule thus vacates the 1997 PM_{10} standards and the ancillary provisions directly related thereto. Because EPA has no discretion as to what action to take, notice and opportunity for public comment are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). For the same reason, EPA finds that there is good cause, within the meaning of 5 U.S.C. 553(d)(3), to make the rule effective immediately.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order.

Because this action involves a ministerial removal of regulatory text in response to a court order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to EO 12866 review.

B. Paperwork Reduction Act

The Administrator has determined today's action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), since it directly imposes no burden at all. Burden means the total time, effort, or financial resources expended to generate and maintain, retain, or provide information as required by a rule. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for collecting, validating, and verifying information or processing and maintaining information; adjust the existing ways to comply with previous instructions and requirements; train personnel to respond to the collection of information; search data sources; complete and review the information; and transmit the information. Today's rule imposes no such burden on any entity.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 jurisdictions. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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, as well as 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

[1] The provisions of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act apply to this action. See Clean Air Act section 307(d)(1) (final sentence).

Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a Small Government Agency Plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to sections 202 and 205 of the UMRA. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

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 Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or EPA consults with State and local officials early in the process of developing the proposed regulation. Also, the EPA may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB in a separately identified section of the preamble to the rule a Federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with Federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This action 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 will not alter the overall relationship or distribution of powers between governments for the Title V Program. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

This action 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Accordingly, this rule is not subject to Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health 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 the EPA determines (1) economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 action is not subject to Executive Order 13045 because it is not an economically-significant, regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

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 (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, business practices, *etc.*) that are developed or adopted by voluntary-consensus standard 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 is not considering 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has

made such a good cause finding, including the reasons therefor, and established an effective date of [date of publication] for this rule. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Immediate Effective Date

As noted earlier, EPA is making this rule effective immediately. Since EPA has no discretion as to what action to take and is simply amending the rules to conform to the D.C. Circuit's order of vacatur, comment on these amendments is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B).

For the same reason, there is good cause to make the rule effective immediately pursuant to 5 U.S.C. 553(d)(3).

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Particulate matter.

40 CFR Part 58

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 22, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, chapter I, title 40 of the *Code of Federal Regulations*, is amended as follows:

PART 50—[AMENDED]

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

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

■ 2. Section 50.3 is revised to read as follows:

§ 50.3 Reference conditions.

All measurements of air quality that are expressed as mass per unit volume (*e.g.*, micrograms per cubic meter) other than for the particulate matter ($PM_{2.5}$) standards contained in § 50.7 shall be corrected to a reference temperature of 25°C and a reference pressure of 760 millimeters of mercury (1,013.2 millibars). Measurements of $PM_{2.5}$ for purposes of comparison to the standards contained in § 50.7 shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

§ 50.7 [Amended]

■ 3. Section 50.7 is amended as follows:

■ a. Revising the section heading.

■ b. Revising paragraph (a) introductory text.

■ c. Removing paragraphs (a)(1) introductory text, (a)(2), (d) and (e).

■ d. Redesignating paragraphs (a)(1)(i) and (a)(1)(ii) as paragraphs (a)(1) and (a)(2) respectively.

§ 50.7 National primary and secondary ambient air quality standards for $PM_{2.5}$.

(a) The national primary and secondary ambient air quality standards for particulate matter are 15.0 micrograms per cubic meter (μg/m^3) annual arithmetic mean concentration, and 65 μg/m^3 24-hour average concentration measured in the ambient air as $PM_{2.5}$ (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by either:

* * * * *

Appendix K—[Amended]

■ 4. The heading of Appendix K is revised to read as follows:

Appendix K to Part 50—Interpretation of the National Ambient Air Quality Standards for PM_{10}.

Appendix M—[Amended]

■ 5. Appendix M is removed and reserved.

Appendix N—[Amended]

■ 6. Appendix N is amended by revising the appendix heading and removing section 3.0 in its entirety and revising paragraphs (a) and (c) of section 1.0 to read as follows:

Appendix N to Part 50—Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$

1.0 General.

(a) This appendix explains the data handling conventions and computations necessary for determining when the annual and 24-hour primary and secondary national ambient air quality standards for PM specified in § 50.7 of this part are met. Particulate matter is measured in the ambient air as $PM_{2.5}$ (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by a reference method based on appendix L of this part, as applicable, and designated in accordance with part 53 of this chapter, or by an equivalent method designated in accordance with part 53 of this chapter. Data handling and computation procedures to be used in making comparisons between reported $PM_{2.5}$ concentrations and the levels of the PM standards are specified in the following sections.

* * * * *

(c) The terms used in this appendix are defined as follows:

Average and mean refer to an arithmetic mean.

Daily value for PM refers to the 24-hour average concentration of $PM_{2.5}$ calculated or measured from midnight to midnight (local time).

Designated monitors are those monitoring sites designated in a State PM Monitoring Network Description for spatial averaging in areas opting for spatial averaging in accordance with part 58 of this chapter.

98th percentile means the daily value out of a year of $PM_{2.5}$ monitoring data below which 98 percent of all values in the group fall.

Year refers to a calendar year.

* * * * *

PART 58—[AMENDED]

■ 1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613 and 7619.

§ 58.13 [Amended]

■ 2. Section 58.13 is amended by revising paragraph (d) to read as follows:

§ 58.13 Operating schedule.

* * * * *

(d) For PM_{10} samplers—a 24-hour sample must be taken from midnight to midnight (local time) to ensure national consistency. The minimum monitoring schedule for the site in the area of expected maximum concentration shall be based on the relative level of that monitoring site concentration with respect to the level of the controlling standard. For those areas in which the short-term (24-hour) standard is controlling, *i.e.,* has the highest ratio, the selective sampling requirements are illustrated in Figure 1. If the operating agency were able to demonstrate by monitoring data that there were certain periods of the year where conditions preclude violation of the PM_{10} 24-hour standard, the increased sampling frequency for those periods or seasons may be exempted by the Regional Administrator and revert back to once in six days. The minimum sampling schedule for all other sites in the area would be once every six days. For those areas in which the annual standard is the controlling standard, the minimum sampling schedule for all monitors in the area would be once every six days. During the annual review of the SLAMS network, the most recent year of data must be considered to estimate the air

quality status for the controlling air quality standard (24-hour or annual). Statistical models such as analysis of concentration frequency distributions as described in ''Guideline for the Interpretation of Ozone Air Quality Standards,'' EPA–450/479–003, U.S. Environmental Protection Agency, Research Triangle Park, NC, January 1979, should be used. Adjustments to the monitoring schedule must be made on the basis of the annual review. The site having the highest concentration in the most current year must be given first consideration when selecting the site for the more frequent sampling schedule. Other factors such as major change in sources of PM_{10} emissions or in sampling site characteristics could influence the location of the expected maximum concentration site. Also, the use of the most recent 3 years of data might, in some cases, be justified in order to provide a more representative data base from which to estimate current air quality status and to provide stability to the network. This multiyear consideration would reduce the possibility of an anomalous year biasing a site selected for accelerated sampling. If the maximum concentration site based on the most current year is not selected for the more frequent operating schedule, documentation of the justification for selection of an alternative site must be submitted to the Regional Office for approval during the annual review process. It should be noted that minimum data completeness criteria, number of years of data and sampling frequency for judging attainment of the NAAQS are discussed in appendix K of part 50 of this chapter.

BILLING CODE 6560–50–P

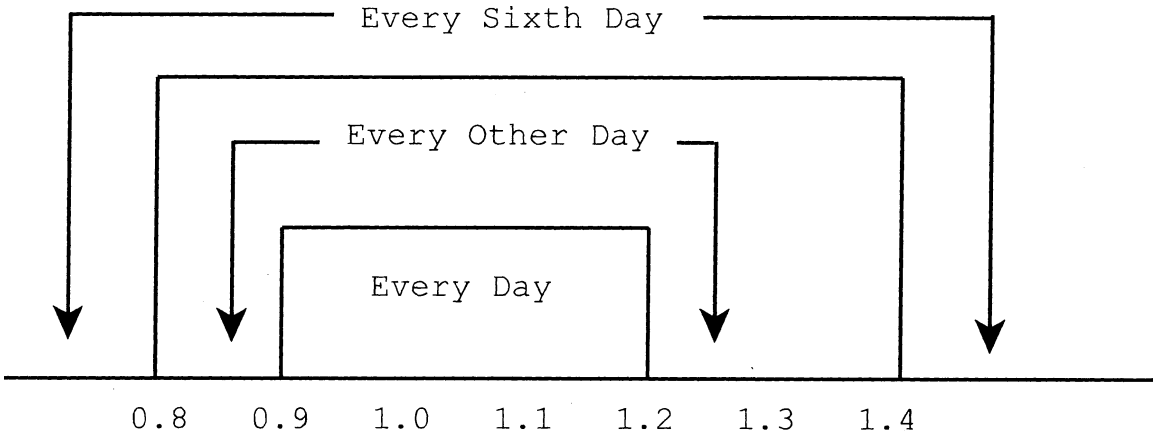

Figure 1 - Ratio to Standard

* * * * *

[FR Doc. 04–17372 Filed 7–29–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Petition IV–2003–7; FRL–7795–1]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Cargill, Inc.—Soybean Oil Mill; Gainesville (Hall County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated July 16, 2004, partially granting and partially denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to Cargill, Inc.—Soybean Oil Mill (Cargill) located in Gainesville, Hall County, Georgia. Pursuant to section 505(b)(2) of the Clean Air Act (the Act), judicial review of any denial of the petition may be sought in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act. No objection shall be subject to judicial review until final action is taken to issue or deny a permit under section 505(c).

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/cargillamendment_decision2003.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, to object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on October 7, 2003, requesting that EPA object to a state title V operating permit issued by EPD to Cargill. The Petitioner maintains that the Cargill permit is inconsistent with the Act due to: (1) The inadequacy of EPD's reasonably available control technology determinations for various emission units; (2) the inadequacy of various monitoring and reporting requirements; (3) the inadequacy of the statement of

basis; and (4) the permit's inability to assure compliance.

On July 16, 2004, the Administrator issued an order partially granting and partially denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner adequately demonstrated that the Cargill permit is not in full compliance with the requirements of the Act on the grounds raised.

Dated: July 22, 2004.

J.I. Palmer,

Regional Administrator, Region IV.

[FR Doc. 04–17373 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7793–4]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the South 8th Street Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the South 8th Street Landfill Superfund Site (Site), located in West Memphis, Crittenden County, Arkansas, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by the EPA with the concurrence of the State of Arkansas, through the Arkansas Department of Environmental Quality, because the EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective September 28, 2004, unless EPA receives adverse comments by August 30, 2004. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Vincent Malott, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF-AP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8313 or 1–800–533–3508 (*malott.vincent@epa.gov*).

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: EPA Region 6, Seventh Floor Reception Area, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, Appointments: (214) 665–6548, Monday-Friday—7:30 a.m. to 4:30 p.m.; West Memphis Public Library, 213 North Avalon, West Memphis, AR 72301, (870) 732–7590, Monday 10 a.m.—8 p.m., Tuesday—Thursday 10 a.m.—7 p.m., Friday 10 a.m.—5 p.m., Saturday 10 a.m.—3 p.m., closed on Sunday; Arkansas Department of Environmental Quality, attention: Masoud Arjmandi, 8001 National Drive, Little Rock, Arkansas 72219, (501) 682–0852, Monday-Friday, excluding holidays, 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Vincent Malott, Remedial Project Manager (RPM), EPA Region 6 (6SF-AP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8313 or 1–800–533–3508 (*malott.vincent@epa.gov*).

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

The EPA Region 6 is publishing this direct final notice of deletion of the South 8th Street Landfill Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because the EPA considers this action to be noncontroversial and routine, the EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 28, 2004, unless the EPA receives adverse comments by August 30, 2004, on this notice or the parallel notice of intent to delete published in the proposed rules section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete, the EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. The EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses the South 8th Street Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses the EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, the EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, the EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the Arkansas Department of Environmental Quality on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The Arkansas Department of Environmental Quality concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate Federal, State, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, the EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter the EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides the EPA's rationale for deleting the Site from the NPL:

Site Location

The South 8th Street Landfill Superfund Site is a 16.3 acre landfill on the flood plain between the Mississippi River and the St. Francis Levee in West Memphis, Crittenden County, Arkansas. The Site is located at the southern end of 8th Street adjacent to the Tom Sawyer RV Park. Two barge terminals are located on the bank of the Mississippi River at the midpoint and south end of the Site. Aerial photographs indicate that the Site was excavated for gravel deposits resulting in a series of borrow pits that were subsequently used for the disposal of industrial and municipal wastes. The former landfill area is subdivided into three separate disposal areas. Area 1 (4.3 acres) of the landfill consists primarily of a former municipal waste landfill. Area 2 (8.1 acres) is predominately an industrial waste landfill with a large oily sludge pit occupying 2.5 acres of the area. Area 3 (3.9 acres) consists of several smaller municipal and industrial waste disposal areas.

Site History

Aerial photographs indicate that the Site was used for the disposal of waste material after 1957. Most of the early disposal activities appear to have been conducted on a 2.61 acre parcel of land (Area 2) leased by Mr. W. M. Gurley from the W. L. Johnson Company. Apparently, Gurley Refining Company used the Site (Area 2) between approximately 1960 and 1970 for the disposal of waste sludge from its re-refining process located on the land side of the St. Francis Levee immediately west of the Site. The sludge waste in the pit has physical and chemical properties similar to material typically identified at oil reclamation facilities.

The Site was first brought to the attention of the United States Government in 1979 in the Eckhardt Survey conducted by the House Congressional Sub-Committee on Interstate Commerce and Transportation. In this survey, the landfill was listed as the West Memphis Landfill Site, South 8th Street.

Between 1981 and 1988, the EPA conducted a series of soil boring investigations of the oily sludge pit and surrounding landfill areas. Polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), benzene, toluene, ethylbenzene, xylene, pesticides, and heavy metals were detected in the samples.

The Site was proposed for listing on the NPL as the ''West Memphis Landfill Site'' on February 7, 1992 (57 FR 4827). The Site was listed final on the NPL as the ''South 8th Street Landfill Site'' on October 14, 1992 (57 FR 47184).

The EPA constructed a 1600 linear foot berm around the oily sludge pit under the CERCLA time-critical removal authority to minimize the spread of contamination that could result from flooding of the Site. Construction of the berm was completed between October 19, 1992, and November 4, 1992.

Remedial Investigation and Feasibility Study (RI/FS)

The EPA issued a Unilateral Administrative Order (UAO) to the Potentially Responsible Parties (PRPs) on May 23, 1992. The UAO required the PRPs to construct a fence around the former disposal areas and to investigate the large oily sludge pit. Construction of the fence was completed in July 1992. Although the PRPs initially undertook the pit investigation on August 31, 1992, the EPA took over the pit investigation in September 1992 and completed the Remedial Investigation/Feasibility Study (RI/FS) for the Site in 1993.

The 2.5 acre oily sludge pit and ancillary soil and debris in Area 2 of the landfill was identified as the principal threat and the remaining 16 acre landfill in Areas 1, 2, and 3 were identified as a low-level threat. The investigation of the landfill and oily sludge pit area was conducted through exploratory trenching and borings. Within the pit area, the acidic oily sludge was encountered at depths of 18 feet and contained volatile organic compounds, PAHs, pentachlorophenol, PCBs, and metals including lead and arsenic. The estimated total volume of the oily sludge pit and surrounding contaminated soils was 22,000 cubic yards. Municipal and industrial wastes were identified in the trenches through the landfill but no other hot spots were identified in the landfill contents.

The results of the ground water investigation are presented in a September 30, 1996, RI Report. A total of 14 monitoring wells were installed at the Site to determine the impact of contaminants leaching from the landfill and oily sludge pit into the ground water. Ground water sample analyses performed in 1993, 1995, 1996, and 1997 only identified inorganic contamination, principally lead, arsenic, and manganese. The ground water Feasibility Study (FS) report was completed in July 1997.

Characterization of Risk

The source control operable unit which contained the 2.5 acre oily sludge pit, was identified as a principal threat, and the surrounding landfill, was identified as a low-level threat. The most significant threat to human health from the pit area was attributed to the low pH of the sludge which was corrosive and could have caused severe burns through accidental exposure. The oily sludge wastes also contained high

concentrations of lead, PCBs, and PAHs. The surrounding landfill contained principally industrial debris and household trash. The landfill area was determined to be a low-level threat that did not require active remediation in order to be protective if there was no direct contact or ingestion. For the ground water operable unit, only inorganic contamination, principally lead, arsenic, and manganese was present in the ground water above either the Maximum Contaminant Levels established under the Safe Drinking Water Act or health-based cleanup goals established for the Site.

Record of Decision Findings

The EPA issued a Proposed Plan for the Site on July 27, 1993, and the public comment period closed on September 24, 1993. The EPA signed a Record of Decision (ROD) on September 29, 1994, for the source control operable unit. The remedial action objectives for the oily sludge pit were to prevent current and future direct contact with the highly corrosive wastes; prevent current and future direct contact, ingestion, and inhalation of contaminants in the pit waste and ancillary contaminated soil and debris; prevent the future migration of contaminants from the sludge pit area to other areas both on and off the site; and, prevent the potential for future migration of contaminants to the ground water at concentrations above appropriate action levels. The remedial goals for the oily sludge pit were established to meet the above remedial action objectives and are based on a recreational risk scenario developed in the baseline risk assessment. The cleanup goals were 3 mg/kg for total PAHs as measured by benzo(a)pyrene equivalents, 10 mg/kg for PCBs (total), and 500 mg/kg for lead.

The remedial action objectives for the landfill area were to prevent direct contact with and ingestion of the landfill contents; and, ensure that contaminants present in the landfill areas that may migrate into the ground water will not constitute a threat to public health and the environment. Remedial goals were not developed for the landfill area of the Site because the risk assessment indicated the landfill areas to be a low-level threat that will not require active remediation in order to meet the remedial action objectives.

The major remedy components in the 1994 ROD included:

- Excavation, stabilization, and off-site disposal of an estimated 22,000 cubic yards of contaminated sludge, soil, and debris exceeding the remedial action goals of 500 mg/kg lead, 10 mg/kg PCBs, and 3 mg/kg PAHs (as benzo(a) pyrene equivalents);
- The placement of a 2-foot thick soil cover over the remaining landfill area;
- Placement of deed notifications or other institutional controls to ensure that any future landowners will be notified that the land was a former Superfund site and has been cleaned up in accordance with CERCLA; and
- Long-term operation and maintenance and ground water monitoring.

In the 1994 ROD, the EPA also divided the Site into source control and ground water operable units and deferred the ground water remedy selection until additional site data had been collected.

Based on additional data collected during the remedial design, the PRPs proposed an alternative in-situ treatment method that would also meet the remedial goals and objectives for the Site at a lower cost. Upon evaluation of this additional data, the EPA proposed an amended remedy in a Proposed Plan dated January 1998. In this Proposed Plan, the EPA also identified three alternatives for the ground water contamination.

The EPA signed a ROD Amendment for the Site on July 22, 1998, amending the remedy for the source control operable unit and selecting a remedy for the ground water operable unit. The major components of the amended remedy for the source control operable unit included:

- In-situ stabilization/solidification of an estimated 23,500 cubic yards of contaminated sludge, soil, and debris exceeding the remedial action goals of 500 mg/kg lead, 10 mg/kg PCBs, and 3 mg/kg PAHs (as benzo(a) pyrene equivalents) and capable of meeting the more stringent performance standards for in-place management of the treated material and protection of the Site ground water;
- Installation of a 2-foot thick natural soil cover over part of Area 1 of the landfill and the treated oily sludge pit area in Area 2 of the landfill; and,
- Placement of deed notifications or other institutional controls to ensure that any future landowners will be notified that the land was a former Superfund site and waste has been treated and is being managed at the site.

The remedial action objectives for the ground water operable unit were to prevent exposure to the contaminated ground water, above acceptable risk levels for potential receptors, and restore the ground water to human health-based standards following remediation of the oily sludge pit. The cleanup goals for the ground water were 50 μg/l for arsenic, 2000 μg/l for barium, 4 μg/l for beryllium, 15 μg/l for lead, and 4,088 μg/l for manganese. For the ground water operable unit, monitored natural attenuation was the selected remedy for the hazardous substances in the ground water and institutional controls to prevent exposure to the ground water prior to achieving the remedial action goals.

Response Actions

The EPA issued a UAO on November 18, 1998, to the PRPs for implementation of the remedial action at the oily sludge pit. After further negotiations, the EPA and the settling PRPs signed a Consent Decree for implementation of the source control operable unit remedy. The Consent Decree was lodged with the U.S. District Court for the Eastern District of Arkansas on November 23, 1999, and entered by the Court on December 12, 2000. Since the Consent Decree had not been entered by the District Court prior to completing remediation of the oily sludge pit area, the remedial action was completed under the terms of the UAO.

The PRP's remedial construction contractor mobilized to the Site in June 1999 and initiated the first round of pilot tests in July 1999 to select a final reagent mix design for the stabilization/solidification treatment process. Pilot tests on the ancillary soils were completed in August 1999, and final testing on the oily sludge wastes was completed in November 1999. Stabilization of the oily sludge pit began in December 1999 and was completed in April 2000. A total of 19,376 cubic yards of oily sludge waste was treated through stabilization/solidification. Stabilization of the ancillary soils began in September 1999 and was completed in May 2000. A total of 20,372 cubic yards of soil was treated through stabilization/solidification. An additional 2000 cubic yards of oily sludge waste mixed with soil and debris were discovered in June 2000 and treatment was completed by August 2000. The PRPs completed installation of the 2.7 acre soil cover on the adjacent landfill area in September 1999, and over the 4.28 acre area of treated material in June 2000.

The borrow area used for the soil cover was graded and contoured so that repeated flooding by the Mississippi River and accumulation of silts and clay will establish a pond and surrounding wetland at the Site. Since 2000, the 1.58 acre borrow pit has accumulated water and vegetation due to flooding at the site. The water level in the borrow pit rises and falls in response to the water levels in the Mississippi River.

Institutional controls were implemented at the Site to prevent exposure to ground water and the treated waste and landfill contents. The Consent Decree (Section V.9.a, Section IX.24.b) lodged in the U.S. District Court for the Eastern District of Arkansas in November 1999 and entered in December 2000, specified a property easement, running with the land, that: (1) Grants a right of access for the purpose of conducting any activity related to the Consent Decree or any other activity related to implementing the ROD, including but not limited to, monitoring; and (2) grants to the right to enforce the land and water use restrictions listed in the Consent Decree to the United States, the State of Arkansas and its representatives, the other settling defendants, and other appropriate grantees. The land and water use restrictions are also specified in the property easement and include: (1) The prohibition on the installation of water wells in the alluvial aquifer until the remedial goals for the ground water operable unit have been achieved; (2) the prohibition on the removal of vegetation from the landfill cover if such removal may result in the subsequent erosion or removal of the soil cover over the landfill or treated material; and (3) the prohibition on the excavation or trenching into the treated material, landfill contents, or the associated soil cover with some exceptions. The property easement was executed on March 6, 2001, by the William L. Johnson Co. The prohibition on further excavation into the treated material, landfill contents, or soil cover effectively prohibits further well installation at the site due to the site-wide presence of the landfill and the treated oily sludge pit.

The EPA issued the Preliminary Close Out Report on September 19, 2000, and the Remedial Action report on December 31, 2001.

Long-term remedial action for the ground water operable unit was implemented through a sampling and analysis program conducted between January and November 2003. The sampling and analysis for the ground water included eight sampling events of the nine monitoring wells surrounding the oily sludge pit. The ground water monitoring program demonstrated that the combination of source area treatment and natural attenuation processes were effective in achieving the cleanup goals for the ground water operable unit. As a result of the completed remedial action for the oily sludge pit, the treated waste is no longer a source of the metals contamination previously detected in the ground water. The nine groundwater monitoring wells were plugged and abandoned in June 2003.

The EPA issued the Final Remedial Action Report on June 9, 2003, following achievement of the remedial goals for the ground water operable unit. The Final Close Out Report for the Site was issued on September 25, 2003.

Cleanup Standards

The sampling and analysis program for the oily sludge pit remediation included confirmatory testing to demonstrate compliance with the physical and chemical performance criteria for the stabilized material, and verification testing to demonstrate that the native soil beneath the treated material met the remedial goals for the site. For the confirmatory sampling, samples of the treated oily sludge and ancillary soil material were collected for unconfined compressive strength (UCS) and synthetic precipitation and leaching procedure (SPLP) testing at a frequency of one for every 500 cubic yards and permeability testing at a frequency of one for every 1000 cubic yards. Treated material was tested following a 7-day, 14-day, and 28-day cure time. An allowance is made for 20 percent of the samples collected from the treated oily sludge material to exceed the SPLP performance standards by a factor of two times, and 10 percent of the samples to exceed the standard by a factor of five times.

A total of 48 confirmatory samples of the treated oily sludge material were collected for SPLP and UCS testing and 24 samples for permeability testing. Of the 24 samples for permeability testing, the average of all samples was 5×10^{-7} cm/sec which exceeded the treatment goal of 1×10^{-6} cm/sec as an allowable average. In addition, all samples exceeded the treatment goal of 1×10^{-5} cm/sec as a maximum permeability value. Of the 48 samples for UCS analysis, the average UCS value was 68.9 which exceeded the treatment goal of 50 psi as an allowable average. The SPLP performance criteria was also met or exceeded in the 48 samples except for two samples that did not meet the lead performance criteria.

Confirmatory sampling of the stabilized ancillary soil material included 43 samples for chemical and physical testing. Of the 21 samples for permeability testing, the average of all samples was 7×10^{-7} cm/sec which exceeded the treatment goal of 1×10^{-6} cm/sec as an allowable average. In addition, all samples exceeded the treatment goal of 1×10^{-5} cm/sec as a maximum permeability value. Of the 43 samples for UCS analysis, the average UCS value was 67 which exceeded the treatment goal of 50 psi as an allowable average. The SPLP performance criteria was also met or exceeded in the 43 samples except for four samples that did not meet the lead performance criteria.

Verification testing was conducted beneath the treated oily sludge pit and at the base of the ancillary soil excavations for exceedances of the remedial goals. Verification sampling beneath the oily sludge pit was accomplished through ten borings and split-spoon sampling of the native soil beneath the treated oily sludge. All of the verification samples for the oily sludge pit were either non-detect or below the remedial goals. Verification sampling was performed after the hydraulic excavators had excavated the ancillary soils from each of the cells within the pit area. Of the seven verification samples from the base of the excavations, none of the samples had an exceedance of the remedial goals.

The sampling and analysis program for the ground water included eight sampling events of the nine monitoring wells surrounding the oily sludge pit between January 2002 and November 2002. The ground water monitoring program demonstrated that the combination of source area treatment and natural attenuation processes were effective in achieving the cleanup goals for the ground water operable unit. Lead and arsenic concentrations were below the remedial goal in all wells during each of the eight sampling events. While barium and beryllium were both listed as contaminants of concern, these two metals have remained below the cleanup goals both before and after remediation of the oily sludge pit. Average manganese concentrations were also below the remedial goal in all wells during each of the eight sampling events.

Operation and Maintenance

There are no scheduled operation and maintenance requirements for this Site. Future site inspections may be conducted as necessary during property redevelopment efforts to ensure that the institutional controls remain protective of human health, and in support of the five year review remedy evaluations. The stabilized/solidified waste in the former oily sludge pit does not require any maintenance and was designed to remain in-situ based on the stringent treatment standards. The 2-foot thick soil cover on the landfill and treated oily sludge pit area does not require mowing or other vegetation control since the vegetation helps to reduce potential erosion during flooding events. Since the soil cover is intended

to prevent accidental exposure to the landfill contents and the treated waste material, rather than act as an impermeable cap, roots from the vegetation will not impact the intended protectiveness of the soil cover. Soil and debris are also being added to the oily sludge mound area as part of the current property redevelopment efforts, creating an additional protective layer on the treated waste material. The security fence around the Site has been removed with the exception of the area within the hardwood wetlands that separates the Site from the St. Francis levee. A security gate at the entrance to the Site from South 8th Street was left in place at the request of the property owner to control access to the Site.

Five-Year Review

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. Since the cleanup of the South 8th Street Landfill site utilized in-situ stabilization and solidification of the hazardous materials as the method to reduce the risk, the five-year review process will be used to insure that the site reuse and redevelopment activities are consistent with the site restrictions. The EPA completed the first statutory five-year review in June 2004 and determined that the remedy selected for the South 8th Street Landfill remains protective of human health and the environment. For future five-year reviews, EPA will continue to monitor the reuse and redevelopment activities at the South 8th Street Landfill site and perform a five-year review inspection. EPA plans to complete the next Five-Year Review by June 2009.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of Arkansas, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because the EPA considers this action to be noncontroversial and routine, the EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 28, 2004, unless the EPA receives adverse comments by August 30, 2004, on a parallel notice of intent to delete published in the proposed rule section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on the proposal, the EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect, and the EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 20, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. In Appendix B to Part 300, Table 1 is amended by removing the entry for ''South 8th Street Landfill, West Memphis, Arkansas.''

[FR Doc. 04–17301 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7792–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Ralph Gray Trucking Company Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX is publishing a direct final notice of deletion of the Ralph Gray Trucking Company Superfund Site (Site), located in Westminster, California, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of California, through the California Department of Toxic Substances Control because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective September 28, 2004, unless EPA receives adverse comments by August 30, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Don Hodge, Community Involvement Coordinator, U.S. EPA Region IX (SFD–3), 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3240 or 1–800–231–3075.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, San Francisco, CA 94105–3901, (415) 536–2000, Monday through Friday 8 a.m. to 5 p.m.; Westminster Public Library, 8180 13th Street, Westminster, CA 92683, (714) 893–5057.

FOR FURTHER INFORMATION CONTACT: Patricia Bowlin, Remedial Project Manager, U.S. EPA Region IX (SFD–7–3), 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3177 or 1–800–231–3075.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region IX is publishing this direct final notice of deletion of the Ralph Gray Trucking Company Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 28, 2004, unless EPA receives adverse comments by August 30, 2004, on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Ralph Gray Trucking Company Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with State of California on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The State of California concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The Ralph Gray Trucking Company Superfund Site is located in a 23-acre residential neighborhood of Westminster, Orange County, California. This neighborhood, also known as Westminster Tract Number 2633, is located north of the San Diego freeway (I–405) and is bounded by the Orange County flood control channel to the south, Goldenwest Avenue to the west, the U.S. Navy railroad (abandoned) to the north, and Chestnut Street to the east. The area to the west of the site is residential and the other surrounding areas are used for light industrial and commercial activities.

Site History

During the 1930s, the immediate area was primarily used for agricultural purposes and the site was known as the Murdy Dairy Farm. From 1936 until the late 1930's, Ralph Gray Trucking Company collected acid sludge, oil field wastes, and oil refinery wastes and used four unlined pits at the farm as a disposal site. The disposal pits were abandoned in place and remained undisturbed until the construction of 75 homes in the late 1950s. The Hintz Development Company moved the hazardous substances from the pits and buried the material in two unlined trenches which had been cut through the backyard areas of about 25 of the lots before the homes were built. Five homes were built directly over one of the original waste pits.

By 1965, residents reported black sludge seeping into their yards from the ground. Throughout the 1970s, residents routinely complained to city officials about the black sludge and buried waste material uncovered during excavations

for swimming pools and house additions. In 1983, Orange County referred the site to the California Department of Health Services (DHS) for investigation. Between 1987 and 1991, DHS conducted annual seep removals and issued an advisory to the residents recommending they not eat vegetables and fruit grown in their yards. During the period, DHS also completed a Mulipathway Health Risk Assessment, developed a draft feasibility study (RI/FS), and prepared a draft Remedial Action Plan (RAP).

In 1989, EPA completed the Preliminary Assessment/Site Investigation (PA/SI) which concluded that local residents could potentially be exposed to hazardous substances via several exposure routes, including dermal contact, ingestion, and inhalation. The Site was proposed for listing on the NPL in July 1991 and placed on the NPL in October 1992. EPA decided to conduct a non-time-critical removal action because of the threat to public health posed by hazardous waste and contaminated soil at the Site and the length of time necessary to initiate a remedial action selected in a Record of Decision.

Engineering Evaluation and Cost Analysis (EE/CA)

From November 1992 through April 1993, EPA conducted a focused investigation to further study the waste body. In general, the hazardous substances found at the site were present in two different forms: surface seep material and buried waste. Both forms of the material were comprised of volatile organic compounds (VOCs), various sulfur and organic sulfur compounds, and polynuclear aromatic hydrocarbons (PAHs).

EPA completed the Engineering Evaluation and Cost Analysis (EE/CA) in August 1993 which recommended a removal action to address the buried hazardous substances on site. The EE/CA found that releases of VOCs and sulfur dioxide from both seep and buried waste material had occurred and would continue to occur unless a removal action was conducted. The VOCs in the seep and buried waste material included known and potential human carcinogens, and the levels of sulfur dioxide could impact individuals with impaired respiratory systems.

Action Memorandum

The initial Action Memorandum (AM) for the site, dated March 29, 1994, authorized the non-time-critical removal action for the site. Under this AM, EPA proposed to excavate contaminated soils and subsurface hazardous substances from 25–30 properties, and dispose of the contaminated materials and soil off-site at an authorized disposal facility. The removal action required the razing and restoration of backyard improvements such as house additions, swimming pools, decks, and other structures. The AM also authorized EPA to conduct a groundwater investigation to determine whether contaminants had migrated to the underlying groundwater.

The second AM, dated May 12, 1995, authorized EPA to raze and reconstruct five homes which were built directly over the waste body. The third AM, dated July 8, 1996, authorized EPA to enter into a cash settlement agreement with one resident in lieu of landscaping restoration. The fourth AM, dated December 17, 1996, authorized EPA to enter into cash settlement agreements with the owner of the five homes that were razed during the removal in lieu of reconstruction.

Characterization of Risk

The Multipathway Health Risk Assessment determined that the sum of excess individual lifetime cancer risks from the contamination at the site ranged from 6 x 10–6 to 7 x 10–5 which is sufficient to warrant an EPA response action given the close proximity of humans to the waste and the uncertainty associated with risk characterizations. In addition, a June 1993 review by DHS identified the potential for an acute health threat to individuals who inhaled the emissions from disturbed seep or buried wastes.

Response Actions

EPA entered into an Interagency Agreement with the U.S. Bureau of Reclamation (USBR) to conduct the removal activities at the site. USBR conducted engineering surveys of all the properties at the site, extensive soil sampling throughout the neighborhood to determine the extent of the waste body, prepared the removal design package, retained a removal contractor and restoration contractor, and administered the temporary relocation program. The removal action commenced in June 1994 and was completed in February 1997.

Pursuant to the first AM, EPA conducted groundwater sampling from nine previously installed monitoring wells to determine if cleanup activities were necessary. EPA conducted sampling in July 1997 through November 1997 and in October and November 1999. Based on the sampling results, EPA determined that neither the intermediate nor deep aquifers, which are the only viable potential sources of drinking water in the area, were impacted by the contamination at the site. Sampling of the perched shallow zone indicated minor water quality impacts from the site were present. However, EPA did not propose any further action because (1) this perched zone is not a viable potential source of drinking water, hence human exposure to the residual contamination is unlikely, and (2) the residual contamination did not pose a significant health risk even in the unlikely event of human consumption.

Site Closure

During the removal work at the Site, EPA installed vault boxes for a potential soil vapor extraction (SVE) system. After EPA conducted soil and groundwater sampling, EPA determined that the removal action was successful and that the SVE system was not needed. In April 2003, EPA properly abandoned the SVE vaults and the nine groundwater monitoring wells.

Cleanup Standards

The cleanup of the site complies with the ''clean closure'' requirements, consistent with the Resource Conservation and Recovery Act of 1976, as amended, 40 CFR 264.111. EPA believes that it has found and removed all significant sources of hazardous waste from the site. Confirmatory sampling verifies that EPA has achieved the Action Memoranda cleanup objectives. There are no hazardous substances remaining at the site above health-based levels, and, therefore, no five-year reviews will be required.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of California, has determined that all appropriate responses under CERCLA have been completed and that no further response actions under CERCLA are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 28, 2004, unless EPA receives adverse comments by August 30, 2004. If adverse comments are received within the 30-day public comment period, EPA

will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 21, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under California (''CA'') by removing the entry for ''Ralph Gray Trucking Co.''

[FR Doc. 04–17299 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7794–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion for the Niagara County Refuse Superfund site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region II Office announces the deletion of the Niagara County Refuse Superfund site from the National Priorities List (NPL). The Niagara County Refuse site is located in the Town of Wheatfield, Niagara County, New York. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and New York State, through the Department of Environmental Conservation (NYSDEC) have determined that all appropriate response actions have been implemented and no further response actions, other than operation, maintenance, and monitoring, are required. In addition, EPA and the NYSDEC have determined that the remedial action taken at the Niagara County Refuse site is protective of public health, welfare, and the environment.

EFFECTIVE DATE: July 30, 2004.

FOR FURTHER INFORMATION CONTACT: Michael J. Negrelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4278.

SUPPLEMENTARY INFORMATION: To be deleted from the NPL is: the Niagara County Refuse Superfund site, Town of Wheatfield, Niagara County, New York.

A Notice of Intent to Delete for the Niagara County Refuse site was published in the **Federal Register** on March 17, 2004. The closing date for comments on the Notice of Intent to Delete was April 16, 2004. EPA received two comments on the proposed deletion during the public comment period. Both comments were from local residents opposed to the deletion due to historical flooding problems experienced at their homes associated with wetlands adjacent to the landfill and their properties. The commentors assigned a portion of the blame for the flooding to the presence of the landfill and EPA's actions at the landfill. In response, EPA notes that research shows that poor drainage and flooding were evident at least as far back as the 1970s and that both federal and State designated wetlands located to the north of the site have been regulated since the late 1970s. Steps were taken during the remediation of the landfill to minimize or reduce the impacts of increased surface water drainage to an already existing flood prone environment. EPA's decision to propose the site for delisting is based on the successful implementation of the multi-layered cap remedy to contain landfill wastes to prevent the migration of contaminants into the surrounding environment, thereby mitigating risks to human health and the environment. The monitoring data collected on a regular basis since the construction of the remedy was completed in December 2000 confirm that the remedy is operating as designed and is protective of human health and the environment. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution controls, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 6, 2004.

Walter Mugdan,

Acting Regional Administrator, Region II.

■ For the reasons set out in the preamble, part 300, Chapter I of Title 40 of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9675; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing ''Niagara County Refuse, Town of Wheatfield, New York.''

[FR Doc. 04–17374 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 411

[CMS–6014–F]

RIN 0938–AL14

Medicare Program; Interest Calculation

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule changes the way we calculate interest on Medicare overpayments and underpayments to providers, suppliers, health maintenance organizations, competitive medical plans, and health care prepayment plans to be more reflective of current business practices. This change reduces the amount of interest assessed on overpayments and underpayments and simplifies the way the interest is calculated. This change in the way we calculate interest also applies to Medicare Secondary Payer debt.

DATES: This final rule is effective on October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Nancy Braymer, (410) 786–4323.

SUPPLEMENTARY INFORMATION:

I. Background

A. Interest Calculation

Sections 1815(d) and 1833(j) of the Social Security Act (the Act) require that, whenever a payment to a provider, supplier, or other entity is more than (overpayment) or less than (underpayment) the amount that was due to the provider, supplier, or other entity, we assess interest on the amount of the overpayment that the provider, supplier, or other entity owes to us or the underpayment that we owe to the provider, supplier, or other entity. This interest becomes due if the overpayment amount owed to us or the underpayment amount owed by us is not paid within 30 days of the date of the final determination of the overpayment or underpayment.

Payments we receive are applied first to accrued interest and then to principal. Interest we collect on overpayments and Medicare Secondary Payer (MSP) recoveries goes to the Treasury as general revenue. The principal amount we recover is used to reimburse the applicable Medicare trust fund—the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund. Interest we pay on Medicare underpayments comes from the applicable Medicare trust fund.

We determine the rate of interest in accordance with 42 CFR 405.378 by comparing the Private Consumer Rate with the Current Value of Funds Rate and assessing the interest at the higher of the two rates that is in effect on the date of the final determination of the amount of the overpayment or underpayment.

Interest is calculated from the date of the final determination and is owed if the amount of the overpayment or underpayment is not paid within 30 days. Interest accrues daily but is assessed and calculated in 30-day periods. A period that is less than 30 days is considered to be a full 30-day period.

In this final rule, we are changing the method of calculating the amount of interest that is assessed on overpayments and underpayments to better align our practices to a commercial business model. Previously, we assessed interest prospectively (30 days into the future). Under private sector practices, interest is assessed on delinquent debts retrospectively.

Effective with this final rule, periods of less than 30 days will not be treated as a full 30-day period. We will assess interest only for full 30-day periods when payment is not made on time. The date of the final determination is the first day of the first 30-day period. As an example, if a Medicare overpayment is not paid within the 30-day time period specified in the demand letter, the debtor would owe interest for one 30-day period on day 31. No interest would be due on day 29 or day 30.

The change in the method of calculation applies only to overpayments and underpayments whose date of final determination occurs on or after the effective date of this final rule.

B. Technical Correction

We are making a technical correction to correct a reference that was cited in a previous revision of the Code of Federal Regulations (CFR). In § 411.24, the rate of interest to be assessed on Medicare Secondary Payer debts is incorrectly referenced as appearing in § 405.376(d), rather than § 405.378(d), which is the correct reference.

C. Clarification of Application to Medicare Secondary Payer (MSP) Debt

Section 1862(b)(2)(B)(i) of the Act provides express authority to assess interest on MSP debts. Our longstanding policy and practice have been to calculate interest on MSP debt using the method applicable to Medicare overpayments and underpayments as set forth in § 405.378. Specifically, interest is calculated in 30-day periods, and a period that is less than 30 days is considered to be a full 30-day period for MSP debts as well as for Medicare overpayments and underpayments.

It was and remains our intent to use the revised methodology set forth in this final rule for both types of debts: MSP recoveries and non-MSP Medicare overpayments and underpayments. Specifically, periods of less than 30 days will no longer be treated as a full 30-day period. However, the proposed rule published in the **Federal Register** (68 FR 43995) on July 25, 2003 did not make this intent explicit, even though the regulatory impact analysis in that proposed rule included MSP debts in assessing the costs and benefits of this regulatory change.

Therefore, this final rule amends § 411.24 to clarify that this change in the methodology for calculating interest applies to MSP debts, as well as Medicare overpayments and underpayments under § 405.378. As an example, where a group health plan based MSP debt is not paid within the 60-day time period specified in the recovery demand letter, under the current practice the debtor would owe interest for three 30-day periods on day 61, for four 30-day periods on day 91, and so forth. Under this final rule, the debtor would owe interest for two 30-day periods on day 61, for three 30-day periods on day 91, and so forth.

This change in the method of calculation applies only to those MSP debts where the debt is established on or after the effective date of this final rule. MSP debts are routinely established as of the date of the recovery demand letter.

II. Provisions of the Proposed Rule

The provisions of the proposed rule were the following:

- In § 405.378, we stated that we would revise paragraph (b)(2) to delete the requirement that periods of less than 30 days be treated as a full 30-day period.
- In § 411.24, we stated that we would revise paragraph (m)(2)(iii) to correct the reference to § 405.376(d) by changing the reference to § 405.378(d).

III. Provisions of the Final Rule

No public comments were received in response to the provisions of the proposed rule which, consequently, have not been changed in this final rule. However, we have made a clarifying addition. In § 411.24, we have revised paragraph (m)(2)(ii) to make explicit that interest is applied for full 30-day periods.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (PRA).

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866, (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

This final rule is not a major rule. It simply changes the way we calculate interest on overpayments and underpayments and MSP debts. It does not change how overpayments or underpayments are determined, nor does it require providers, suppliers, or other entities to change the way they interact with us in determining overpayments and underpayments. It does not change how MSP debts are established.

During fiscal year (FY) 2001, we recovered $167 million in interest on delinquent overpayments and MSP debts. In FY 2002 and FY 2003, we recovered $115.7 million and $93.4 million, respectively. Had this final rule been in effect, interest recoveries would have been $153 million in FY 2001, $106.1 million in FY 2002, and $85.6 million in FY 2003. This represents a difference of $14 million for FY 2001, $9.6 million for FY 2002, and $7.8 million for FY 2003 due to the change in the interest calculation. During FY 2001, we paid $2.6 million in interest on underpayments; during FY 2002, we paid $5.2 million; and during FY 2003, we paid $4.1 million. Had this final rule been in effect, in FY 2001 interest payments would have been $2.4 million, a difference of $0.2 million. In FY 2002 interest payments would have been $4.8 million, a difference of $0.4 million; and in FY 2003 interest payments would have been $3.8 million, a difference of $0.3 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and government agencies. Most hospitals, and most other providers, suppliers, health maintenance organizations, competitive medical plans, and health care prepayment plans are small entities, either by nonprofit status or by having revenues of $29 million or less in any one year. During FY 2001, we recovered $167 million in interest on delinquent overpayments and MSP debts; during FY 2002, we recovered $115.7 million; and during FY 2003, we recovered $93.4 million. Had this final rule been in effect, interest recoveries would have been $153 million during FY 2001, $106.1 million during FY 2002, and $85.6 million during FY 2003, a difference of $14 million, $9.6 million, and $7.8 million, respectively. This would amount to 0.1 percent of the $13.5 billion in overpayments and MSP debts recovered during FY 2001 and less than 0.1 percent of the $13.4 billion recovered during FY 2002 and of the $14.5 billion recovered during FY 2003. During FY 2001, we paid $2.6 million in interest on underpayments; during FY 2002, we paid $5.2 million; and during FY 2003, we paid $4.1 million. Had this final rule been in effect, we would have paid $2.4 million during FY 2001, $4.8 million during FY 2002, and $3.8 million during FY 2003, a difference of $0.2 million, $0.4 million, and $0.3 million, respectively. This would amount to less than 0.1 percent of the $236 billion, $246.8 billion, and $272.6 billion in benefit payments made during FY 2001, FY 2002, and FY 2003, respectively. For further details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final rule has no operations impact on any provider, supplier, or other entity including small rural hospitals. The final rule simply changes the way we calculate interest we assess on overpayments and underpayments and MSP debts. It does not change how overpayments or underpayments are determined nor require providers, suppliers, or other entities to change how they interact with us in determining overpayments or underpayments. Therefore, we have determined that this final rule would not have a significant effect on the operations of a substantial number of rural hospitals. Because the interest we collect in a year far exceeds the interest we pay, the majority of providers, suppliers, and other entities will benefit from changing the method of calculating interest.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. During the three-year period from FY 2001 through FY 2003, we recovered $167 million, $115.7 million, and $93.4 million, respectively, in interest on delinquent overpayments and MSP debts. Had this final rule been in effect, interest recoveries would have been $153 million during FY 2001, a difference of $14 million. For FY 2002, interest recoveries would have been $106.1 million, a difference of $9.6 million, and for FY 2003, $85.6 million, a difference of $7.8 million. During FY 2001, we paid $2.6 million in interest on underpayments. Had this final rule been in effect, we would have paid $2.4 million, a difference of $0.2 million. During FY 2002, we paid $5.2 million in interest on underpayments, and during FY 2003, we paid $4.1 million. Had this final rule been in effect, interest payments in FY 2002 would have been $4.8 million, a difference of $0.4 million, and in FY 2003, $3.8 million, a difference of $0.3 million.

This final rule does not have an impact on State, local, or tribal governments. It reduces annual expenditures by providers, suppliers, or other entities in the private sector because it changes the way that we compute interest on any delinquent overpayments or MSP debts owed to us. Additionally, the change in interest calculation that we pay on underpayments owed to providers, suppliers, and other entities will not be an expenditure by a State, local, or tribal government.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule imposes no direct requirement costs on State and local governments, does not preempt State law, or have any Federalism implications. By changing how we calculate interest, we are reducing the amount of interest assessed on overpayments and MSP debts owed to

us and underpayments owed by us to providers, suppliers, and other entities.

B. Effects on the Medicare and Medicaid Programs

This final rule reduces the amount of interest assessed on Medicare overpayments and underpayments and MSP debts. During FY 2001, we recovered $167 million in interest on delinquent overpayments and MSP debts. Had this final rule been in effect, interest recoveries would have been $153 million, a difference of $14 million. During FY 2001, we paid $2.6 million in interest on underpayments. Had this final rule been in effect, we would have paid $2.4 million, a difference of $0.2 million. During FY 2002, we recovered $115.7 million in interest on delinquent overpayments and MSP debts. Had this final rule been in effect, interest recoveries would have been $106.1 million, a difference of $9.6 million. During FY 2002, we paid $5.2 million in interest on underpayments. Had this final rule been in effect, we would have paid $4.8 million, a difference of $0.4 million. In FY 2003, interest recoveries were $93.4 million and would have been $85.6 million, or $7.8 million less, had this rule been in effect. In FY 2003, interest we paid was $4.1 million and would have been $3.8 million, or $0.3 million less, had this rule been in effect. There is no effect on the Medicaid program.

C. Alternatives Considered

We considered a number of other methods to use in calculating the amount of interest owed. We assessed the relative merits of alternative calculation methods based on two primary criteria: comparability to a commercial business model and secondly, relative ease and cost of administration. Applying the first criterion precludes continuing our current calculation method. Under this final rule, we are able to use commercially obtained off-the-shelf software to calculate interest. As in the private sector, the debtor will still have a set payment period to pay the amount owed without additional interest being assessed during the payment period. We considered calculating and assessing interest on a daily basis but determined this would be prohibitively expensive and administratively burdensome for Medicare contractors, providers, beneficiaries, and other entities.

D. Conclusion

This final rule is not a major rule. It does not change the way overpayments or underpayments are determined, nor how MSP debts are established. It does not have a significant impact on a substantial number of rural hospitals. Since a partial period is no longer considered a full 30-day period, interest assessed on amounts owed to us will be reduced. Therefore, this final rule reduces State, local, and tribal government expenditures. The final rule does not impose any direct requirement costs on State and local governments and does not preempt State law or have any Federalism implications.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule does not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

■ 1. The authority citation for part 405, subpart C, continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1351, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

■ 2. In § 405.378, paragraph (b)(2) is revised to read as follows:

§ 405.378 Interest charges on overpayments and underpayments to providers, suppliers, and other entities.

* * * * *

(b) * * *

* * * * *

(2) Interest accrues from the date of the final determination as defined in paragraph (c) of this section, and either is charged on the overpayment balance or paid on the underpayment balance for each full 30-day period that payment is delayed.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 3. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Insurance Coverage That Limits Medicare Payment; General Provisions

■ 4. In § 411.24, paragraphs (m)(2)(ii) and (iii) are revised to read as follows:

§ 411.24 Recovery of conditional payments.

* * * * *

(m) * * *

(2) * * *

(ii) Interest may accrue from the date when that notice or other information is received by CMS, is charged until reimbursement is made, and is applied for full 30-day periods; and

(iii) The rate of interest is that provided at § 405.378(d) of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 26, 2004.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 15, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–17316 Filed 7–29–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 62

RIN 1660–AA28

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency (FEMA),

Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim final rule.

SUMMARY: FEMA is amending the Federal Insurance Administration, Financial Assistance/Subsidy Arrangement (''Arrangement'') and related regulations regarding issues of Federal jurisdiction and applicability of Federal law for lawsuits involving Write-Your-Own (WYO) Companies and of reimbursement to WYO Companies for the cost of litigation. Additionally, FEMA is amending procedures for companies seeking to become, and ceasing to be, WYO Companies.

DATES: This interim final rule takes effect on October 1, 2004. FEMA invites comments on this interim final rule, which should be received on or before September 28, 2004.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, FEMA, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) *FEMA–RULES@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Charles Plaxico, FEMA, 500 C Street, SW., Washington, DC 20472, (phone) 202–646–3422, (facsimile) 202–646–4327, or (email) *Charles.Plaxico@dhs.gov.*

SUPPLEMENTARY INFORMATION: Approximately 100 private sector property insurers issue flood insurance policies and adjust flood insurance claims under their own names, based on the Arrangement with the Federal Insurance Administration (FIA) (44 CFR Part 62, Appendix A). The WYO insurers receive an expense allowance and remit the remaining premium to the Federal Government. The Federal Government pays for flood losses incurred through WYO insurers and pays loss adjustment expenses based on a fee schedule. Litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by FIA based on submitted documentation. The Arrangement provides that under certain circumstances reimbursement for litigation costs will not be made. On October 14, 2003, FEMA published a proposed rule (68 FR 59146) that would make several changes to the Arrangement and related regulations.

During the comment period, FEMA received comments from two insurance agent trade associations, one insurance company trade association, two WYO Companies, and a committee of WYO Company representatives with whom FEMA regularly consults on WYO matters. The two insurance agent trade associations requested an opportunity to present oral comments during the comment period, and pursuant to 44 CFR 1.6, FEMA arranged for such a session, which was held on November 6, 2003. Also in attendance with an opportunity to comment were WYO Company representatives, an attorney representing the committee of WYO representatives, and representatives from an insurance company trade association.

The two insurance agent associations in their oral and written comments opposed FEMA's proposal to clarify 44 CFR 61.5 by creating a new Subsection f from the current text of Subsection e to provide that agents selling Standard Flood Insurance Policies issued by a WYO Company, like agents selling the policies issued directly by FEMA, act for the insured and are not agents of the WYO Company. The committee of WYO representatives supported the change in its oral and written comments and urged that the proposed changes in their entirety be made final. One WYO Company also urged that the proposed changes in their entirety be made final. Because of the issues raised, FEMA believes this proposed change warrants further comment and review. Therefore, FEMA is publishing this interim final rule without the change to 44 CFR 61.5. Comments on whether changes to 44 CFR 61.5 should be added to the regulations are invited in response to this interim final rule. FEMA will consider making changes to 61.5 in the final rule after reviewing any further comments. FEMA is also specifically seeking comments on whether this provision has a significant economic impact on a substantial number of small entities. FEMA hopes to publish the final rule in 2004.

One of the insurance trade associations, in opposing the change to 44 CFR 61.5, also opposed the change to 44 CFR 62.22 without explanation. That change codifies the understanding of FEMA and numerous court rulings and specifically provides that Federal jurisdiction under 42 U.S.C. 4072 encompasses lawsuits against WYO Companies. The association said it supports jurisdiction in Federal Courts, but opposes Federal preemption of State law as it applies to lawsuits between WYO Companies and independent agents and agencies. It did not identify which portions of the proposed rule are related to this concern. We have looked at the concerns raised but do not understand how section 62.22 applies nor do we understand the concern about preemption. Therefore we did not make any changes to this interim final rule based on these comments. Rather we invite further comments, which we will consider prior to publishing a final rule.

The remaining amendments in the proposed rule related to Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement.

The insurance company trade association opposed only allowing, at the discretion of the Administrator, an appeal to the WYO Standards Committee of a decision by the Administrator not to reimburse for litigation. It also suggested that the Administrator be required to act within 30 days, with a 30-day extension at the Administrator's discretion. (See Article III.D.3.d.) The committee of WYO Company representatives also expressed concern about this change, but said it accepted it as part of the complete set of changes in the proposed rule. FEMA believes the Administrator should have the discretion to refer appeals to the WYO Standards Committee, so the interim final rule does not change this provision. The 30-day deadline for the Administrator to act has not been added. FEMA believes that a reasonable time to act is implied, so a deadline is not necessary. However, we have clarified that the Administrator must act within a reasonable time.

Also, the committee of WYO Company representatives expressed concern about the ''pattern of errors'' basis for not reimbursing for litigation, but said it accepted it as part of the complete set of changes in the proposed rule. One of the WYO Companies opposed the ''pattern of errors'' (Article III.D.3.b) provision as lacking ''definition and statutory authority.'' It also contended that ''at a bare minimum to pass constitutional muster, the federal government, not the auditor, must provide advance written notice and an opportunity to challenge the alleged ''pattern of errors''.'' While FEMA does not agree with the comment and continues to believe that it has broad statutory authority to set the rules for the administration of the NFIP, and further believes that the right to appeal any denial of reimbursement for litigation in the Arrangement is sufficient safeguard for the WYO Companies, FEMA is withdrawing the ''pattern of errors'' portion of the proposed rule. Rather FEMA will continue to rely on the ''significantly outside the scope of the Arrangement'' standard for reimbursement decisions including those decisions related to a pattern of errors.

One of the WYO Companies suggested clarifying a provision in Article I that the WYO Companies and the Federal

Government are the sole parties under the Arrangement. FEMA agrees and has made that change in the interim final rule.

This WYO Company suggested several other changes. One was to clarify that, under the proposed revision to the procedures for a WYO Company that is ceasing participation (Article V.C and V.E), transferring the flood insurance book of business to another WYO Company is an option for the company and will not be required by FIA. This was FEMA's intent. FEMA believes that the revision to Article V.C is clear that this is an option for the company but that it will not be required by FIA. In light of the WYO Company's comment, FEMA has changed Article V.E to clarify any ambiguity. Article V.D has a provision similar to the one in V.E and has been likewise clarified.

Another suggested change was to make the 2004 Arrangement run concurrently with Congressional reauthorization. In the past, the reauthorization dates have been October 1 and January 1. The NFIP was recently reauthorized by Congress through September 30, 2008 (Public Law 108–264). In light of this reauthorization, the concern that prompted this comment appears to have been addressed for a number of years.

Finally, the proposed rule did not contain any change in the reimbursement for unallocated loss adjustment expense (ULAE), which is in Article III.C.1. However, a WYO Company proposed to increase the reimbursement for ULAE from 3.3% to 6.0%. FEMA had been reviewing this issue prior to the proposed rule and had requested that the WYO Companies furnish data. However, the data received was not sufficient to make a decision, so the proposed rule did not contain any change regarding reimbursement for ULAE. Now, FEMA plans to make a detailed data call to the WYO Companies, and after reviewing the responses, will make a decision as to whether and to what extent it believes a change is justified. Any change will require another rulemaking action. FEMA does not believe that it will be practical to make any change effective for the Arrangement year beginning October 1, 2004, so any change would likely be effective October 1, 2005.

In addition to the changes discussed above, FEMA has made a few editorial changes.

During July 2004, FEMA will send a copy of the offer for the 2004–2005 Arrangement year, together with related materials and submission instructions, to all private insurance companies participating under the current 2002–2004 Arrangement. Any private insurance company not currently participating in the WYO Program but wishing to consider FEMA's offer for 2004–2005 may request a copy by writing: Federal Emergency Management Agency, Mitigation Division, Attn: WYO Program, Washington, DC 20472, (facsimile) 202–646–3445, or (e-mail) *Edward.Connor@dhs.gov.*

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this interim final rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a significant regulatory action is subject to review by the Office of Management and Budget (''OMB'') and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In determining whether we should move forward with this rule, we considered three alternatives. The First Alternative was to take no action and to allow the WYO Arrangement to expire as a result. 44 CFR 62.23 would become inoperative, the appendixes to Part 62 would expire, and effective October 1, 2004 the companies no longer would have a relationship with FEMA except for the runoff of existing policies and the sale and administration of the Standard Flood Insurance Policies by the participating private WYO Companies would cease. This alternative would have the following adverse impact on the number of NFIP policies-in-force, future Disaster Assistance, and on those individuals who as a result are not insured at the time of their next flood loss.

The number of policies-in-force can be expected to drop following the expiration of the WYO Arrangement because insurance agents would lose their vehicle for renewing the existing policies. These agents would be required to establish a relationship with our Direct-side contractor and then renew their existing policyholders through that contractor. Many agents would not make this transition. Even for those who would make this transition, there would be a delay in completing this change of relationship, which would result in a delayed renewal for many policies. Any losses suffered by those policyholders in the interim would be uninsured, causing significant economic loss to them.

The net effect once all agents who intend to continue writing flood insurance have established the proper Direct-side relationship will be a greatly reduced NFIP policyholder base. Any quantification of that drop is speculative at this point, but FEMA's informed judgment is up to a 5 percent decrease in the number of policyholders (which is about 250,000 policies). Such a decline in flood insurance policies would create more uninsured flood victims with (1) a corresponding increase in Disaster Assistance, (2) more individuals facing large monthly payments as they repay their Disaster Loans, and (3) victims without available Federal Assistance when no Presidential Disaster Declaration is declared. Since average annual NFIP losses currently exceed $800 million, this would mean an expected reduction of NFIP losses of between $10 million to $40 million—an amount that would be either directly borne by the property owner, or partially shouldered by the taxpayers through Disaster Assistance or loans.

If the Arrangement were to be implemented again in the future, it would be unrealistic to expect that the drop in NFIP policies-in-force would be restored quickly, and there likely would be an overall long-term negative influence on policies in force. There also would be a moderate to serious long-term impact on the favorable working relationship FEMA has developed with the WYO Companies.

A Second Alternative would be to extend the current WYO Arrangement and to delay further or eliminate the changes to the WYO Arrangement included in this rule. Although the consequences would not be as significant as the First Alternative, delaying the rule leaves the Program subject to the following possible adverse developments:

The rule will clarify our current understanding and would ensure that future NFIP litigation will be properly brought in Federal courts. If the rule is delayed, the Program and insureds will

incur increased costs related to cases improperly brought in State courts, and there is a risk of inconsistent application of laws and inappropriate application of State law to this Federal Program.

Certain provisions of the proposed rule are intended to reduce the litigation exposure throughout the Program. For example, the limitation on situations where premium refunds are allowed should restrict the number of future lawsuits on this issue. Therefore, a delay in this rule could result in unexpected litigation costs to the WYO Companies and FEMA.

The Third Alternative is to amend the Arrangement as outlined in this interim final rule. We believe that doing so would prevent the cost shifting to the Federal taxpayers outlined in the first two alternatives. In addition, by clarifying the rule to comport with our understanding of jurisdiction, we will ensure that cases are brought in the appropriate Federal courts, and the provision limiting litigation exposure to the Program and its participants would minimize unnecessary proceedings (including those in State courts), protect the Federal Treasury, and further the purposes of the Program. We further believe that the clarity that this interim final rule brings to the NFIP would make it easier for companies and agents to sell NFIP policies thereby further transferring the costs of floods from the taxpayers to this premium funded Program.

OMB has reviewed this rule under the principles of Executive Order 12866. This rule is a significant rule as defined under Executive Order 12866.

National Environmental Policy Act

This interim final rule falls within the exclusion category of 44 CFR Part 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. Because no other extraordinary circumstances have been identified, this interim final rule will not require the preparation of either an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act.

Paperwork Reduction Act

This interim final rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could ''have a significant economic impact on a substantial number of small entities.'' The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not ''have a significant economic impact on a substantial number of small entities.''

We believe that this rule does not have a significant economic impact on a substantial number of small entities, and as a result at the time of the proposed rule we issued a certification that the rule did not.

We received a comment that indicated that the proposed change to 44 CFR 61.5 would have a significant impact on a substantial number of small entities. In light of that comment, we have decided not to include that provision in this interim final rule. Rather, we are requesting additional comments on the proposed change to 44 CFR 61.5, as outlined in the proposed rule, and in particular on whether it would have a significant impact on a substantial number of small entities. We request that comments on this issue be as specific as possible when commenting on the type and scope of the impact and to provide as much quantitative information as possible to assist us in understanding the issue. If, after our own further evaluation and review of any additional comments that we receive, we believe the change to 44 CFR 61.5 is still warranted and think that it may have an impact, we will prepare an Initial Regulatory Flexibly Analysis (IFRA). If we prepare an IFRA we will publish it and seek public comment prior to publication of a final rule on 44 CFR 61.5.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria to which agencies must adhere in formulating and implementing policies that have federalism implications; that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and must consult with State and local officials before implementing any such action to the extent practicable.

FEMA has reviewed this interim final rule under Executive Order 13132 and concludes that the interim final rule has no federalism implications as defined by the Executive Order. FEMA has determined that the rule does not significantly affect the rights, roles, and responsibilities of States, involves no additional preemption of State law, and does not limit State policymaking discretion.

List of Subjects in 44 CFR Part 62

Flood insurance.

■ Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E. O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. Amend § 62.22 by revising paragraph (a) to read as follows:

§ 62.22 Judicial review.

(a) Upon the disallowance by the Federal Insurance Administration, a participating Write-Your-Own Company, or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any claim after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration, the participating Write-Your-Own Company, or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the insurer only in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

* * * * *

■ 3. Amend § 62.23 by revising paragraph (g) to read as follows:

§ 62.23 WYO Companies authorized.

* * * * *

(g) A WYO Company shall act as a fiscal agent of the Federal Government, but not as its general agent. WYO

Companies are solely responsible for their obligations to their insured under any flood insurance policies issued under agreements entered into with the Administrator, such that the Federal Government is not a proper party defendant in any lawsuit arising out of such policies.

* * * * *

■ 4. In Appendix A to part 62, revise the *Effective Date* to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Effective Date: October 1, 2004.

* * * * *

■ 5. In Appendix A to part 62, revise Article I to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its ''Finding and Declaration of Purpose'' in the National Flood Insurance Act of 1968, as amended, (''the Act'' or ''Act'') recognized the benefit of having the National Flood Insurance Program (the ''Program'' or ''NFIP'') ''carried out to the maximum extent practicable by the private insurance industry''; and

Whereas the Federal Insurance Administration (FIA) within the Mitigation Division recognizes this Arrangement as coming under the provisions of Section 1345 of the Act (42 U.S.C. 4081); and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act (42 U.S.C. 4011)); and

Whereas, the insurer (hereinafter the ''Company'') under this Arrangement shall charge rates established by the FIA; and

Whereas, FIA has promulgated regulations and guidance implementing the Act and the Write-Your-Own Program whereby participating private insurance companies act in a fiduciary capacity utilizing Federal funds to sell and administer the Standard Flood Insurance Policies, and has extensively regulated the participating companies' activities when selling or administering the Standard Flood Insurance Policies; and

Whereas, any litigation resulting from, related to, or arising from the Company's compliance with the written standards, procedures, and guidance issued by FEMA or FIA arises under the Act, regulations, or FIA guidance, and legal issues thereunder raise a federal question; and

Whereas, through this Arrangement, the Federal Treasury will back all flood policy claim payments by the Company; and

Whereas, this Arrangement has been developed to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement and the Act; and

Whereas, over time, the Program is designed to increase industry participation, and accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the sole parties under this Arrangement are the WYO Companies and the Federal Government.

Now, therefore, the parties hereto mutually undertake the following:

■ 6. In Appendix A to Part 62, revise Article II, Section G to read as follows:

Article II—Undertaking of the Company

* * * * *

G. Compliance with Agency Standard and Guidelines.

1. The Company shall comply with written standards, procedures, and guidance issued by FEMA or FIA relating to the NFIP and applicable to the Company.

2. The Company shall market flood insurance policies in a manner consistent with marketing guidelines established by FIA.

■ 7. In Appendix A to Part 62 amend Article III to revise the second paragraph of Section B; revise Section D; and add a sentence to the end of Section E to read as follows:

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

* * * * *

B. * * *

* * * * *

The Company may retain fifteen percent (15%) of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions or salaries of insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

* * * * *

D. Loss Payments.

1. Loss payments under policies of flood insurance shall be made by the Company from Federal funds retained in the bank account(s) established under Article II, Section E and, if such funds are depleted, from Federal funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments include payments as a result of litigation that arises under the scope of this Arrangement, and the Authorities set forth herein. All such loss payments and related expenses must meet the documentation requirements of the Financial Control Plan and of this Arrangement, and the Company must comply with the litigation documentation and notification requirements established by FEMA. Failure to meet these requirements may result in the Administrator's decision not to provide reimbursement.

3. Limitation on Litigation Costs.

a. Following receipt of notice of such litigation, the FEMA Office of the General Counsel (''OGC'') shall review the information submitted. If the FEMA OGC finds that the litigation is grounded in actions by the Company that are significantly outside the scope of this Arrangement, and/or involves issues of agent negligence, then the FEMA OGC shall make a recommendation to the Administrator regarding whether all or part of the litigation is significantly outside the scope of the Arrangement.

b. In the event the Administrator agrees with the determination of the FEMA OGC under Article III, Section D.3.a then the Company will be notified in writing within thirty (30) days of the Administrator's decision that any award or judgment for damages and any costs to defend such litigation will not be recognized under Article III as a reimbursable loss cost, expense or expense reimbursement.

c. In the event a question arises whether only part of a litigation is reimbursable, the FEMA OGC shall make a recommendation to the Administrator about the appropriate division of responsibility, if possible.

d. In the event that the Company wishes to petition for reconsideration of the determination that it will not be reimbursed for any part of the award or judgment or any part of the costs expended to defend such litigation made under Article III, Section D.3.a–c, it may do so by mailing, within thirty (30) days of the notice that reimbursement will not be made, a written petition to the Administrator, who may request advice on other than legal matters of the WYO Standards Committee established under the WYO Financial Control Plan. The WYO Standards Committee will consider the request at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator. The Administrator's final determination will be made in writing within a reasonable time to the Company.

E. * * * As fiscal agent, the Company shall not refund any premium to applicants or policyholders in any manner other than as specified in the NFIP's ''Flood Insurance Manual'' since flood insurance premiums are funds of the Federal Government.

8. In Appendix A to Part 62, revise Article V to read as follows:

Article V—Commencement and Termination

A. The initial period of this Arrangement is from October 1, 2004 through September 30, 2005. Thereafter the Arrangement will be effective on an annual basis for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period

pursuant to the Program's effective date, underwriting and eligibility rules.

B. Each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for subscription or re-subscription to this Financial Assistance/Subsidy Arrangement. The Company shall notify the FIA of its intent to re-subscribe or not re-subscribe within thirty days of publication.

C. In order to assure uninterrupted service to policyholders, the Company shall promptly notify the FIA in the event the Company elects not to participate in the Program during the Arrangement year. If so notified, or if the FIA chooses not to renew the Company's participation, the FIA, at its option, may require the continued performance of all or selected elements of this Arrangement for the period required for orderly transfer or cessation of business and settlement of accounts, not to exceed 18 months, and may either require Article V.C.1 or allow Article V.C.2:

1. The delivery to the FIA of:

a. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

b. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

c. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date; and

d. All funds in its possession with respect to any policies transferred to FIA for administration and the unearned expenses retained by the Company.

2. Submission of plans for the renewal of the business by another WYO Company or Companies or the submission of detailed plans for another WYO Company to assume responsibility for the Company's NFIP policies. Such plans shall assure uninterrupted service to policyholders and shall be accompanied by a formal request for FIA approval of such transfers.

D. Financial assistance under this Arrangement may be canceled by the FIA in its entirety upon thirty (30) days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (i) Fraud or misrepresentation by the Company subsequent to the inception of the Arrangement; or (ii) Nonpayment to the FIA of any amount due the FIA; or (iii) Material failure to comply with the requirements of this Arrangement or with the written standards, procedures, or guidance issued by FEMA or FIA relating to the NFIP and applicable to the Company. Under these specific conditions, the FIA may require the transfer of administrative responsibilities and the transfer of data and records as provided in Article V, Section C.1.a through d. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA. In such event, the Government will assume all obligations and liabilities owed to policyholders under such policies, arising before and after the date of transfer. As an alternative to transfer of the policies to the Government, the FIA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO Company as provided in Article V, Section C.2.

E. In the event that the Company is unable or otherwise fails to carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities within the scope of the Arrangement owed to policyholders arising before and after the date of transfer, and the Company will immediately transfer to the Government all needed records and data and all funds in its possession with respect to all such policies transferred and the unearned expenses retained by the Company. As an alternative to transfer of the policies to the Government, the FIA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO Company as provided by Article V, Section C.2.

F. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be canceled for any new or renewal business, but the Arrangement shall continue for policies in force that shall be allowed to run their term under the Arrangement.

■ 9. In Appendix A, Part 62, revise Article VII Section C. to read as follows:

Article VII—Cash Management and Accounting

* * * * *

C. In the event the Company elects not to participate in the Program in this or any subsequent fiscal year, or is otherwise unable or not permitted to participate, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the expiration or termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement, subject to audit, of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities that shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

■ 10. In Appendix A to Part 62, revise the first paragraph of Article IX to read as follows:

Article IX—Errors and Omissions

In the event of negligence by the Company that has not resulted in litigation but has resulted in a claim against the Company, FEMA will not consider reimbursement of the Company for costs incurred due to that negligence unless the Company takes all reasonable actions to rectify the negligence and to mitigate any such costs as soon as possible after discovery of the negligence. Further, (i) if the claim against the Company is grounded in actions significantly outside the scope of this Arrangement or (ii) if there is negligence by the agent, FEMA will not reimburse any costs incurred due to that negligence. The Company will be notified in writing within thirty (30) days of a decision not to reimburse. In the event the Company wishes to petition for reconsideration of the decision not to reimburse, the procedure in Article III, Section D.3.d shall apply.

* * * * *

■ 11. In Appendix A to Part 62, revise Article XVI to read as follows:

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, *i.e.*, to assure that any taxpayer funds are accounted for and appropriately expended. The Company is a fiscal agent of the Federal Government, but is not a general agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any policy issued pursuant hereto, such that the Federal Government is not a proper party to any lawsuit arising out of such policies.

Dated: July 27, 2004.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17358 Filed 7–29–04; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2132; MB Docket No. 04–24; RM–10846]

Radio Broadcasting Services; Lincoln and Yuba City, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 69 FR 8355 (February 24, 2004), this *Report and Order* downgrades Channel 280B1, Station KXCL(FM), Yuba City California, to Channel 280A; reallots Channel 280A to Lincoln, California;

and modifies Station KXCL(FM)'s license accordingly. The coordinates for Channel 280A at Lincoln, California, are 35–54–45 NL and 121–23–20 WL, with a site restriction of 8.7 kilometers (5.4 miles) west of Lincoln.

DATES: Effective September 7, 2004.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–24, adopted July 14, 2004, and released July 20, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893, facsimile 202 863–2898. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Lincoln, Channel 280A and by removing Yuba City, Channel 280B1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–17423 Filed 7–29–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 072604C]

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Bering Sea and Aleutian Islands

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

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of arrowtooth flounder in the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of arrowtooth flounder in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2004 total allowable catch (TAC) of arrowtooth flounder in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 28, 2004, until 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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 2004 TAC of arrowtooth flounder in the BSAI was established as 10,200 metric tons by the final 2004 harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the arrowtooth flounder TAC in the BSAI has been reached. Therefore, NMFS is requiring that further catches of arrowtooth flounder in the BSAI be treated as a prohibited species in accordance with § 679.21(b).

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 a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of arrowtooth flounder in the BSAI.

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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 27, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–17413 Filed 7–27–04; 2:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 146
Friday, July 30, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18716; Directorate Identifier 2003–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This proposed AD would require repetitive external eddy current inspections of the forward fuselage skin to detect cracking due to fatigue, and repair if necessary. This proposed AD is prompted by evidence of cracking due to fatigue along the edges of the chemi-etched pockets in certain front fuselage canopy skin panels. We are proposing this AD to prevent reduced structural integrity of the airplane fuselage.

DATES: We must receive comments on this proposed AD by August 30, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: 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 can get the service information identified in this proposed AD from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18716; Directorate Identifier 2003–NM–240–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. The CAA advises that evidence of cracking due to fatigue has been found along the edges of the chemi-etched pockets in certain front fuselage canopy skin panels. This condition, if not corrected, could result in reduced structural integrity of the airplane fuselage.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.53–167, including Appendices 2 and 3, all dated June 27, 2003. The ISB describes procedures for repetitive external eddy current inspections of certain front fuselage canopy skin

panels to detect cracking, and repair if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive 007–06–2003 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the United Kingdom 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. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require repetitive external eddy current inspections of certain front fuselage canopy skin panels to detect cracking, and repair if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and Referenced Service Bulletin.''

Differences Between the Proposed AD and Referenced Service Bulletin

Although the referenced service bulletin describes procedures for submitting Appendix 1 of the service bulletin with inspection results to the manufacturer, this proposed AD would not require that action. We do not need this information from operators.

The service bulletin specifies that you may perform repairs in accordance with the structural repair manual (SRM), or that you may contact the manufacturer for instructions on how to repair conditions outside the limits defined in the SRM, but this proposed AD would require you to repair those conditions using a method that we or the CAA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the CAA approve would be acceptable for compliance with this proposed AD.

Costs of Compliance

This proposed AD would affect about 54 airplanes of U.S. registry. The proposed actions would take about 40 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $140,400, or $2,600 per airplane, per inspection cycle.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify that the 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. 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.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2004–18716; Directorate Identifier 2003–NM–240–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 30, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by evidence of cracking due to fatigue along the edges of the chemi-etched pockets in certain front fuselage canopy skin panels. We are issuing this AD to prevent reduced structural integrity of the airplane fuselage.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections and Repair

(f) Within the applicable compliance time specified in paragraph (f)(1) or (f)(2) of this AD, perform an external eddy current inspection of the forward fuselage skin to detect cracking, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendices 2 and 3, all dated June 27, 2003.

(1) For Model BAe 146 series airplanes: Inspect before the accumulation of 16,000 total landings, or within 4,000 landings after the effective date of this AD, whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 8,000 landings.

(ii) For areas where any crack is found, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Civil Aviation Authority (CAA) (or its delegated agent). No further inspection of any repaired area is required by this AD.

(2) For Model Avro 146–RJ series airplanes: Inspect before the accumulation of 10,000 total landings, or within 2,000 landings after the effective date of this AD, whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 4,000 landings.

(ii) For areas where any crack is found, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116, or the CAA (or its delegated agent). No further inspection of any repaired area is required by this AD.

No Reporting Requirement

(g) Although the service bulletin referenced in this AD specifies to submit Appendix 1 of the service bulletin with certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in

accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) British airworthiness directive 007–06–2003 also addresses the subject of this AD.

Issued in Renton, Washington, on July 21, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17224 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1309

[Docket No. DEA–211P]

RIN 1117–AA62

Security Requirements for Handlers of Pseudoephedrine, Ephedrine, and Phenylpropanolamine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: DEA is proposing to require that manufacturers, distributors, importers, and exporters of pseudoephedrine, ephedrine, and phenylpropanolamine (PPA) implement security procedures to prevent the theft and diversion of these List I chemicals. These chemicals are available in over-the-counter medications and are widely used in the illicit production of methamphetamine and amphetamine. Based on the number of reports and the size of thefts from manufacturers and distributors of these chemicals, DEA is proposing that these companies implement security measures similar to or as effective as those used for schedule III through V controlled substances. These measures will limit the opportunity for theft and diversion of these chemicals. DEA is soliciting the chemical industry for comments to describe alternate security systems that are equal to the existing controlled substances schedule III through V system.

DATES: To allow adequate time for industry to identify alternative security solutions, written comments must be postmarked, and electronic comments must be sent, on or before October 28, 2004.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–211P'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCD. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/CCD, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* web site. DEA will accept electronic comments containing MS Word, WordPerfect, Adobe PDF, or Excel files only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Special Notice

Due to concerns regarding possible harmful side effects, the Food and Drug Administration (FDA) initiated action in November 2000, to remove phenylpropanolamine (PPA) from the market and requested that all drug companies discontinue marketing products containing PPA. As a result, many firms voluntarily discontinued marketing products containing phenylpropanolamine and removed them from the shelves for disposal. Phenylpropanolamine is a List I chemical, which is used in the illicit synthesis of amphetamine. Once products containing phenylpropanolamine are removed from the market, the requirements being proposed in this rule will affect mainly a few veterinary products containing phenylpropanolamine.

Background

DEA's Legal Authority for These Regulations

DEA implements the Controlled Substances Act (21 U.S.C. 801–971), as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA), the Domestic Chemical Diversion Control Act of 1993 (DCDCA), the Comprehensive Methamphetamine Control Act of 1996 (MCA) and the Methamphetamine Anti-Proliferation Act of 2000 (MAPA) (Title XXXVI of Pub. L. 106–310), among others. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations pursuant to 21 U.S.C. 821 and 871(b). Regulations relating to the control of listed chemicals are found in 21 CFR parts 1309, 1310 and 1313. These regulations are designed to deter the diversion of listed chemicals to the illegal manufacture of controlled substances. Persons authorized to distribute List I chemicals are registered with the Drug Enforcement Administration, when such registration is determined to be consistent with the public interest. Among other factors used in determining the public interest is a registration applicant's maintenance of effective controls against diversion of listed chemicals into other than legitimate channels (21 U.S.C. 823(h)(1)).

Legitimate Uses of Pseudoephedrine, Phenylpropanolamine, and Ephedrine

Pseudoephedrine and ephedrine are chemicals that are widely used in over-the-counter medications. As noted above, phenylpropanolamine, although previously widely available for human consumption, is now being withdrawn from use in over-the-counter drugs and has only a few human and veterinary uses. Pseudoephedrine is a decongestant used for the temporary relief of nasal congestion due to the common cold, hay fever, or other upper respiratory allergies. Ephedrine is used for the temporary relief of shortness of breath, tightness of chest, and wheezing due to bronchial asthma. Each of the products is available in a variety of dosage forms as a single entity or in combination with antihistamines, antitussives, analgesics, expectorants, and/or vitamins.

The majority of the products containing pseudoephedrine or ephedrine purchased by the public are commonly used medications and are easily accessible at pharmacies, grocery stores, convenience stores, and a variety of other retail stores. Most of these products are available to the public without a prescription. A few products containing pseudoephedrine, phenylpropanolamine, or ephedrine require a prescription issued by a practitioner prior to being dispensed to a patient. This proposed regulation will not adversely impact the public's access to these products as it applies solely to manufacturers and wholesalers of the products. Persons unaffected by this rulemaking include retailers, practitioners, and mid-level

practitioners, the vast majority of DEA's more than one million registrants.

Need for Security Controls on Pseudoephedrine, Ephedrine, and Phenylpropanolamine

Each of these chemicals is a List I chemical because they are used to manufacture methamphetamine (otherwise known as ''speed,'' ''ice,'' ''crystal,'' or ''meth'') and, in the case of phenylpropanolamine, amphetamine. Methamphetamine and amphetamine, which are Schedule II controlled substances, are potent central nervous system stimulants and are drug threats in the U.S.

The earliest clandestine methamphetamine laboratories used the chemical phenyl-2-propanone, also known as phenylacetone or P2P, to produce methamphetamine. When P2P was placed into Schedule II as an immediate precursor, traffickers adjusted by switching to production of methamphetamine using other noncontrolled chemicals. Over the past decade, ephedrine and pseudoephedrine have been the chemicals of choice for the illegal production of methamphetamine. Similarly, clandestine laboratories have used phenylpropanolamine in the illegal production of amphetamine. The principal source of supply for these chemicals continues to be over-the-counter medications. As controls on the sale of over-the-counter products have become more effective, DEA has noted an increase in the number of thefts of the products from distributors and manufacturers. Almost all of the reports of List I chemical thefts in the past few years have involved pseudoephedrine, ephedrine, or phenylpropanolamine.

Illegal Manufacture of Methamphetamine and Amphetamine

Until recent years, most illegal methamphetamine produced in the U.S. was manufactured in large illegal laboratories in California. Large-scale methamphetamine production is still concentrated in California, but smaller scale clandestine methamphetamine laboratories have become common throughout the western and midwestern U.S. and have begun moving into the southeast as well. Further, DEA has encountered instances in which amphetamine is being sold on the street as methamphetamine, as well as instances in which amphetamine/methamphetamine mixtures are being sold. Since 1994, when DEA seized 224 clandestine methamphetamine laboratories, the number of clandestine laboratory seizures has increased dramatically. In 2000, DEA and state and local agencies reported 7,267 clandestine laboratory seizures. In 2001, DEA and state and local agencies reported 8,901 clandestine drug laboratory seizures, 97 percent of which were producing methamphetamine. Reported seizures increased again in 2002 to 9,612, with 97 percent producing methamphetamine. Since not all state, local, and federal agencies that seize clandestine laboratories report seizures to DEA, the total number of clandestine laboratories seized is higher than the numbers reported here.

Although California has the highest number of clandestine drug laboratory seizures (1,168) and almost all of the large-scale clandestine laboratories, other states have witnessed the development of substantial clandestine drug laboratory problems. In 2002, 1,049 clandestine drug laboratories were seized in Missouri, 674 in Washington, 481 in Oklahoma, 435 in Arkansas and Tennessee, 400 in Oregon, 394 in Indiana, 391 in Texas, 364 in Iowa, 336 in Illinois and 334 in Kansas. Arizona, Kentucky and Mississippi had over 200 seizures each while Alabama, Florida, Michigan, Minnesota, New Mexico and Utah had more than 100 seizures each in 2002. Most of these clandestine laboratories produce smaller quantities of methamphetamine for personal use and local distribution. As noted earlier, almost all of the clandestine laboratories, whether large or small, use over-the-counter medications as their principal source of supply of precursor material.

The Source of Over-the-Counter Medications for Clandestine Drug Laboratories

Operators of clandestine drug laboratories obtain over-the-counter medications containing pseudoephedrine, ephedrine, and phenylpropanolamine in three ways. First, some rogue manufacturers, distributors, and retailers continue to sell these chemicals to illegal producers. These purchases are often accomplished through multi-tier sales structuring that attempts to insulate the seller of the chemicals from direct contact with the ultimate criminal end-user. In the summer of 2000, Federal agents, working with state and local law enforcement agencies, arrested more than 140 people in eight cities who allegedly were involved in diverting large quantities of these chemicals to clandestine drug laboratories.

DEA has also seen a significant increase in the amount of product that is illegally obtained from Canada. This product is typically used at large clandestine laboratories. DEA believes that as recently implemented Canadian regulations become more effective at curbing the illegal distribution of product from Canada to the United States, there will be greater pressure on other sources of supply. In fact, recent information indicates a possible decrease in chemicals smuggled from Canada, with an increase of suspicious shipments to and through Mexico.

Second, operators of small clandestine laboratories may purchase these drugs from legitimate retail outlets by making small purchases at multiple stores or having a number of people buy small amounts at a single location. The Methamphetamine Anti-Proliferation Act of 2000 (Title XXXVI of Pub. L. 106–310), reduced the threshold for retail transactions involving non-blister pack products from twenty-four grams to nine grams per individual transaction and added a package size requirement of not more than three grams base ingredient per package. For products sold in blister packs, there is no threshold unless the package contains more than three grams of base ingredient or there are more than two dosage units per blister pack. Several large retail chain stores already limit purchases to three packages of these products at any one time. These changes will make it more difficult for illegal methamphetamine producers to obtain their supplies efficiently through over-the-counter purchases.

Third, as the MCA and MAPA have made it more difficult to obtain these chemicals through legitimate channels, and as DEA and state and local agencies have moved against rogue manufacturers and distributors, legitimate manufacturers and distributors have become targets for employee and outsider theft. DEA anticipates that the pressure on rogue manufacturers and distributors and the limits on legitimate sales will cause even more illegal producers to try theft.

Existing Controls on the Sale of These Chemicals

The principal focus of DEA's requirements with respect to these chemicals has been on regulating sales. Manufacturers, distributors, importers, and exporters are required to identify their customers, maintain records of their distributions, and report suspicious proposed transactions. The requirements have emphasized that manufacturers, distributors, importers, and exporters should ''know your customer'' and ensure that all sales of listed chemicals are for legitimate purposes. Little emphasis has been placed on the security of the products while in the possession of

manufacturers, distributors, importers, and exporters. DEA has noted an increase in the reported theft of these products from manufacturers and distributors.

The high street value of these over-the-counter medications makes them an attractive target for thieves. Unlike most items that are stolen, which can be sold on the black market for only a fraction of their retail price, a case of these products (*e.g.*, 144 bottles of 60 count 60-mg pseudoephedrine dosage units) commands a premium on the black market. The wholesale value of a case is between $400 and $500, while the black market price varies between $800 and $5000, depending on the location.

Theft is also attractive because these products are usually stored with other consumer products in warehouses and are sometimes left unattended on loading docks and in freight yards while waiting to be shipped or stored. Although most distributors have security controls for high cost items, such as cameras, they have not usually applied such controls to these products. As a result of the limited security controls placed on these products (*i.e.*, controlled access, employer and employee responsibility to report diversion), an increasing number of thefts are occurring and being reported to DEA.

The Theft Problem

From late 1995 through late 2003, DEA received reports of thefts and losses of more than 1,000 kilograms of bulk ephedrine, pseudoephedrine, and phenylpropanolamine and more than 15 million dosage units or 823 kilograms of these chemical products. (The calculations were based on the smallest dosage unit strength in the absence of the specific information.) The bulk product thefts listed below could produce 2,400 pounds of methamphetamine. The dosage unit thefts could produce about 1,660 pounds. (These estimates are based on theoretical yields. Actual yields depend on the practices and sophistication of a specific clandestine laboratory.) The street value of the methamphetamine that could have been produced from these thefts ranges from $26 million to $122 million.

During the period covered by these reports (late 1995 through late 2003), DEA received very few theft reports that involved other listed chemicals. The nature of the over-the-counter products, their demand and value on the black market, and the absence of effective security controls make them an attractive target for theft.

The lack of understanding of the widespread threat of theft of these products is illustrated by the case of a major distributor with multiple facilities. In 1998, employees at one of the distributor's warehouses stole more than 72,000 dosage units of pseudoephedrine and phenylpropanolamine, some of which were found at a clandestine methamphetamine laboratory. The company responded by installing better security systems at that one warehouse. A second 1998 theft from another of the company's warehouses resulted in a loss of 800,000 dosage units. In 1999, employees at a third warehouse stole more than 500,000 dosage units of pseudoephedrine and phenylpropanolamine, which were found at more than 20 clandestine methamphetamine laboratories and dump sites. In 2000, employees at a fourth company warehouse stole 1,200 dosage units, and at a fifth warehouse, the company discovered and reported eight separate thefts, which totaled almost a million dosage units. In total, this single company lost well over two million dosage units during a three year period. Despite this pattern of theft, the company improved security only after the thefts and only at the warehouses where a theft occurred; there was no apparent effort to proactively establish additional security for the products at other locations operated by the company.

Thefts reported to DEA include, but are not limited to, the following:

Bulk Chemical Thefts

- A manufacturer reported the theft of 90 kilograms (kg) of pseudoephedrine
- An employee stole 12 kg of pseudoephedrine from a manufacturer.
- A manufacturer was robbed of two 25-kg drums of pseudoephedrine stolen, but recovered them. A subsequent inventory check showed a third drum was missing.
- A manufacturer had most of the chemical ingredients needed to make methamphetamine clandestinely (hydriodic acid, red phosphorus, iodine, ephedrine, and pseudoephedrine) stolen from outside a fence. Included in the theft was 4.375 kg of pseudoephedrine.
- A manufacturer had 11.22 kg of pseudoephedrine stolen from a movable cart.
- A distributor had two 25-kg drums of pseudoephedrine stolen from a locked trailer.
- Employees stole 390.91 kg of ephedrine from a manufacturer.
- A manufacturer lost 23 kg of pseudoephedrine.
- A manufacturer lost 55.6 kg of pseudoephedrine during the manufacturing process.
- A manufacturer had eight 55 pound drums of pseudoephedrine (200 kg) stolen from a storage cage which was missing a lock.
- An importer had 70.4 kg stolen from an unlocked quarantine cage.
- A manufacturer had an unexplained loss of 17.87 kg of pseudoephedrine.
- An analytical laboratory had 90 kg of ephedrine stolen during a burglary.

Dosage Unit Thefts

- An employee or employees stole 4,201,112 pseudoephedrine dosage units from a manufacturer.
- A distributor had 150,400 pseudoephedrine 30 mg dosage units and phenylpropanolamine 24.3 mg dosage units stolen.
- A distributor reported the loss of 674,800 pseudoephedrine dosage units in seven thefts from an open area of the warehouse with unrestricted access for employees. The same location reported another theft of 294,900 dosage units from outside a cage.
- A distributor reported the loss of 800,000 pseudoephedrine dosage units due to employee theft.
- A distributor lost 418,224 dosage units of ephedrine and pseudoephedrine in an armed robbery.
- A distributor had 85,000 dosage units of pseudoephedrine and ephedrine stolen.
- An employee stole more than 1,200 pseudoephedrine dosage units.
- A mail order pharmacy had more than 66,000 pseudoephedrine dosage units stolen after they were dropped off by a delivery truck.
- A manufacturing relabeler reported the loss of 83,333 ephedrine dosage units.
- A distributor had a trailer stolen containing more than 22,080 dosage units of pseudoephedrine.
- A hospital lost more than 756,600 pseudoephedrine 60 mg dosage units from an open warehouse, where access was unrestricted.
- A manufacturer had more than 266,669 ephedrine 180 mg dosage units stolen from its waste stock.

A distributor found major shortages in 27 of 34 lots examined; more than 1,578,628 pseudoephedrine and ephedrine dosage units were missing.

- A distributor had a trailer stolen from a residence; the trailer contained more than 96,768 dosage units, some of which were later found at a clandestine laboratory dump site.
- A distributor had a trailer stolen containing 9,216 dosage units of pseudoephedrine.

- An employee stole 8,000 dosage units of pseudoephedrine from a distributor.
- An employee stole 51,100 pseudoephedrine 60 mg dosage units from manufacturer.
- A distributor lost 311,040 pseudoephedrine 60 mg dosage units during a burglary.
- A locked trailer load of over the counter products containing 1,833,504 dosage units of pseudoephedrine was stolen from a distributor.
- A manufacturer had an unexplained loss of 3,288 30 mg dosage units of pseudoephedrine.
- During a routine inventory 40,000 60 mg dosage units of pseudoephedrine were found to be missing from a holding area in a distributor's warehouse. Employee pilferage was suspected.
- A distributor discovered the loss of 119,800 30 mg dosage units of pseudoephedrine from its off site storage warehouse.
- An employee of a manufacturer stole approximately 75,000 dosage units of pseudoephedrine and conspired with others to manufacture methamphetamine. The employee was subsequently arrested.
- An analytical laboratory lost 76,968 120 mg dosage units of pseudoephedrine from a locked in process storage room.
- A distributor lost 7,200 120 mg dosage units of pseudoephedrine.

Impact of Methamphetamine Abuse

As the dramatic increase in the number of clandestine laboratory seizures indicates, methamphetamine abuse is a serious problem. According to the Substance Abuse and Mental Health Services Administration (SAMHSA), Drug Abuse Warning Network, in 2002, methamphetamine was mentioned in almost 18,000 emergency room visits; from 1994 through 2002, there were about 130,000 emergency room visits where methamphetamine was mentioned. (Drugs are often used in combination; it is not possible to determine which drug led to the emergency room visit, if any; in some cases, a patient may have sought treatment unrelated to the drug use.) In 1993, amphetamine treatment admission rates were high in a few Western States—California, Oregon, and Nevada. By 1999, SAMHSA reported that high amphetamine treatment admission rates were seen in most states west of the Mississippi. Amphetamine treatment admission rates increased between 1993 and 1999 by 250 percent or more in 14 states and by 100 to 249 percent in another 10 states. SAMHSA data from 23 metropolitan areas indicate that methamphetamine was involved in more than 500 deaths in 2001.

The surge in methamphetamine abuse has caused serious law enforcement and environmental problems, particularly in rural communities. Rural areas are frequently the site of clandestine laboratories because the manufacturing process produces distinctive odors and can be identified if there are close neighbors. The district attorney of Snohomish County in western Washington reported that two thirds of all crimes in the county are tied to methamphetamine. The number of lab seizures in the county exceeded the number of seizures in New England, New York, and Pennsylvania combined.

Besides causing crime as people steal ingredients to make methamphetamine and steal to support their addiction, the clandestine laboratories often leave serious pollution behind. In 2002, Washington state alone had more than 2,000 sites that required immediate clean-up. A laboratory can produce 6 to 10 pounds of hazardous waste for every pound of methamphetamine produced. In 2003, DEA funded clean-ups of approximately 8,600 clandestine laboratories and estimates that states have funded an equal number of clean-ups. California is reported to have spent about $10 million in 2000 for clean-ups. The Federal and State clean-ups are generally limited to removing chemicals that could be reused; they do not address water and soil pollution that remain. Owners of the property are responsible for completing the clean up of contaminated water and soil, but if the owner cannot pay the cost, local governments bear the burden or the contamination remains.

DEA's Proposal

DEA initially required manufacturers, distributors, importers, and exporters of List I chemicals to implement minimal physical security measures, such as tamper proof storage containers. DEA depended on the individual firms to adequately safeguard the materials in their possession. However, this approach has not been successful even though the affected industry is aware of the problems associated with the diversion of List I chemicals and their use to illegally manufacture methamphetamine. Due to the reported thefts of pseudoephedrine, ephedrine, and phenylpropanolamine and the significant increase in the amount of illegal methamphetamine produced from these products, DEA is proposing that a medium level of security be placed on the areas where pseudoephedrine, ephedrine, and phenylpropanolamine are stored. The proposed regulations allow for a number of security options that may be used for the storage of these products. Therefore, small businesses with minimal inventory will have low cost options available that comply with the proposed regulations. In addition, many of the affected entities with large inventories of pseudoephedrine, ephedrine, and phenylpropanolamine already have secure storage facilities that comply with the requirements.

DEA is proposing that manufacturers, distributors, importers, and exporters of pseudoephedrine, ephedrine, and phenylpropanolamine implement security procedures that are similar to or as effective as those now used by registrants handling Schedule III through V controlled substances. These procedures may include the storage of the substances in a secure safe or steel cabinet, cage, or room and installation of a monitored alarm system linked to a central location or procedures that generally provide the same level of protection. Safes or steel cabinets would need alarm systems only if more than a total of one (1) kilogram of pseudoephedrine, ephedrine, and phenylpropanolamine, combined, were stored at any one time. In evaluating their overall security system, chemical registrants should consider the factors which DEA considers relevant in evaluating overall security requirements for chemical applicants and registrants. These factors are specified in 21 CFR 1309.71(b)(1) through (8):

(1) The type, form, and quantity of List I chemicals handled;

(2) The location of the premises and the relationship such location bears on the security needs;

(3) The type of building construction comprising the facility and the general characteristics of the building or buildings;

(4) The availability of electronic detection and alarm systems;

(5) The extent of unsupervised public access to the facility;

(6) The adequacy of supervision over employees having access to List I chemicals;

(7) The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel in areas where List I chemicals are processed or stored;

(8) The adequacy of the registrant's or applicant's systems for monitoring the receipt, distribution, and disposition of List I chemicals in its operations.

In light of the need for increased security chemical registrants may also wish to consider the factors which DEA considers relevant in evaluating overall security requirements for controlled

substances applicants and registrants. These factors are specified in 21 CFR 1301.71(b)(1) through (14):

(1) The type of activity conducted (*e.g.*, processing of bulk chemicals, preparing dosage forms, packaging, labeling, cooperative buying, etc.);

(2) The type and form of controlled substances (regulated chemicals) handled (*e.g.*, bulk liquids or dosage units, usable powders or nonusuable powders);

(3) The quantity of controlled substances (regulated chemicals) handled;

(4) The location of the premises and the relationship such location bears on security needs;

(5) The type of building construction comprising the facility and the general characteristics of the building or buildings;

(6) The type of vault, safe, and secure enclosures or other storage systems (*e.g.* automatic storage and retrieval system) used;

(7) The type of closures on vaults, safes, and secure enclosures;

(8) The adequacy of key control systems and/or combination lock control systems;

(9) The adequacy of electric detection and alarm systems, if any, including use of supervised transmittal lines and standby power sources;

(10) The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any;

(11) The adequacy of supervision over employees having access to manufacturing and storage areas;

(12) The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel;

(13) The availability of local police protection or of the registrant's or applicant's security personnel, and

(14) The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution and disposition of controlled substances (regulated chemicals) in its operations.

DEA believes that schedule III through V controlled substances security requirements implemented correctly by chemical handlers would be one responsible approach in an effort to deter theft and diversion of regulated chemicals. Keeping pseudoephedrine, ephedrine, and phenylpropanolamine products in such secure areas limits the opportunity for theft. Controlled limited access to such areas discourages employee theft because it makes the identity of the thief easier to determine. However, DEA is soliciting and will consider recommendations regarding alternative means to achieve the same level of security including industry-sponsored security systems and activities, recognizing that in certain circumstances the implementation and use of schedule III through V controlled substances security may pose significant challenges. Therefore, in an effort to accommodate the industry's concerns about implementing this type of security system, DEA requests, invites, and solicits the chemical industry to provide specific efficient and economically acceptable alternatives to the system now required for controlled substances registrants.

Cost of Proposed Security Measures

The ultimate costs of the proposed security will depend on the types of economically acceptable alternatives to the system now required for controlled substance registrants that the chemical industry can provide to DEA. The costs of an alternative system, if adopted, may be significantly less than those discussed in the ensuing paragraphs.

DEA investigated the costs of security systems currently used by controlled substances registrants with emphasis that the economic impact would not place an unreasonable burden on small distributors. These systems allow for a number of security options for the storage of ephedrine, pseudoephedrine, and phenylpropanolamine, including a safe or steel cabinet, a cage, and a separate room within the facility. To develop unit cost estimates, DEA contacted several firms that supply and install various types of security containers and alarm systems to determine the range of costs for each system. DEA determined that a cage is the least expensive storage option if a specific structure is selected. Safes and steel cabinets that meet DEA security requirements would be more costly than a cage. Setting aside a room may not be a feasible option for warehouse operations; many distributors already use cages to store items that are likely to be targets of theft.

As of November 3, 2003, 3,232 distributors were registered to handle at least one of the three drugs; of these, 1,228 were registered to handle all three. Most registrants handle pseudoephedrine (3,092). Of the 3,232 handlers registered with DEA, five are retailers who will not be subject to the new security requirements and are therefore not part of the affected population. Further, DEA determined that 96 of 206 registered importers and exporters do not actually conduct import and export transactions of these drugs. However, to account for constant fluctuations in the registrant population, DEA estimated that this rulemaking would affect approximately 3,100 DEA registrants, including wholesale distributors, manufacturers, and importer/exporters.

As noted above, according to security firms, a cage is likely to be the least expensive option for a facility that stores materials in a warehouse, costing between $2,400 and $3,670 (in 2004 dollars) to purchase and install. Cages vary in cost based on their size. DEA assumed that most distributors are not storing large quantities of these products at any one time and that an 800 cubic feet cage would be sufficient; such a cage could hold at least 5 million dosage units. The costs of a cage were depreciated over 15 years, hence the annual cost of the cage would be between $265 and $403.

An alarm system would cost between $2,100 and $4,190 to purchase and install. Although an alarm system is likely to function for at least 15 years, the analysis depreciated the costs over five years; the annual cost of the alarm system would be between $511 and $1,022. Annual costs for alarm system monitoring and maintenance would be about $1,150. The total annual cost of the equipment per distributor facility (present value over 15 years) would range from $5,700 to $ 9,000. The annualized cost for the equipment and ongoing costs is approximately $1,900 to $2,600 for each distributor.

DEA assumed that the manufacturers and exporters would already have secure storage systems and alarms and would only need to add an annual alarm monitoring system. Because these registrants were assumed to have a much larger alarm system than distributors have, the annual cost for monitoring the system is higher, about $3,100.

The total annualized cost for all affected entities (the approximately 3,100 manufacturers, distributors, importers, and exporters) is between $6.8 million and $8.7 million. The total cost of meeting the security requirements over a 15-year time frame for all affected manufacturers, distributors, importers, and exporters of pseudoephedrine, ephedrine, and phenylpropanolamine is estimated to be between $62 million and $80 million. DEA has been cautious in its approach to estimating the actual costs of implementing the proposed security requirements. Many of the affected entities may already have monitored alarm systems and/or secure storage areas in their facilities to secure other types of products such as small electronic devices, tobacco, or controlled substances. Therefore, the

existing systems could be used to comply with these proposed regulations and the actual additional costs to implement the security requirements will be less than the estimates provided here. Manufacturers, distributors, importers, and exporters are asked to comment on the security measures that are currently utilized in their facilities.

Benefits of the Proposed Rule

If the thefts reported to DEA from 1995 to 2003 constituted all relevant thefts, and if the pattern of thefts were to continue for the next 15 years, assuming no increase in thefts or in the street value of clandestinely produced methamphetamine, the total value of the methamphetamine that could be produced from stolen chemicals over that time would range from $66 million to $307 million. These drugs impose substantial costs on the U.S. economy. As noted above, methamphetamine was mentioned in almost 18,000 emergency room visits in 2002. The cost of these visits range from $8.5 million to $29 million. (Estimates are based on a 1996 national average cost of emergency room visits of $383 reported in the New England Journal of Medicine and a 1997estimate from the Centers for Disease Control of $1,324 for the average cost of emergency room visit for asthma, adjusted to 2004 dollars). In addition, there are costs associated with addiction treatment, law enforcement, and clean up of lab sites. Each of these costs individually is likely to be higher than the total annual costs of security measures. Finally, some of the more than 500 deaths a year associated with methamphetamine could be averted if diversion of these over-the-counter drugs could be curtailed.

Effective Date for Installation of the Security Measures

If finalized, manufacturers, distributors, importers and exporters will have 90 days after the effective date of the final rule to install the security systems. The final rule will become effective 30 days after publication in the **Federal Register**; therefore affected entities will have a total of 120 days to implement the security requirements. If a timely and good faith effort has been made to implement the requirements, and it is determined that an affected entity will be unable to meet the required deadline, then the local DEA office must be notified to make alternate arrangements in the interim.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)). Although the proposed rule will impact a substantial number of small entities (about 2,800 distributors, most of them small businesses), it will not have a significant adverse financial impact on them.

In the North American Industry Classification System (NAICS) (the successor to the Standard Industrial Classification System (SIC code)), the affected manufacturers are most likely to be classified as part of the pharmaceutical industry while importers and exporters are likely to be classified as part of the ''all other inorganic chemical manufacturing'' industry. Distributors are most likely to be captured as part of either the drug and druggists' sundries wholesale sector or the tobacco and tobacco product wholesale sector. DEA further assumes that all manufacturers, exporters, and importers are relatively large in size, but that all of the affected distributors are small businesses, based on the small business size standards provided by the Small Business Administration.

The annual costs for distributors ($1,900–$2,600) represent 0.1 percent to 0.2 percent of the average annual sales of the smallest class of distributors (one to four employees) in the drug and druggist sundries sector (annual sales $1.3 million) and tobacco and tobacco products sector (annual sales $1.9 million) sectors and less than 0.05 percent of average annual sales for the next class (five to nine employees) (annual sales of $4.7 million and $6.3 million respectively). Sales data are from the 1997 Economic Census and, therefore, are likely to be understated.

Even if costs are considered as one-time, non-amortized values, they represent no more than 0.7 percent of the smallest distributor's 1997 sales. Although the Small Business Administration provides no definitive guidance on how to define a significant economic impact, one percent of sales or revenues is a commonly used standard to define the level at which costs may impose an adverse economic impact. The costs of this rule do not approach that level and are likely to be considerably less than the estimated costs because most distributors already have some security systems to protect other goods.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles of Executive Order 12866 Section 1(b). It has been determined that this rule is a significant rulemaking action, and, therefore, this rulemaking has been reviewed by the Office of Management and Budget. As discussed above, DEA has conducted an economic analysis of the security requirements proposed in this rulemaking and does not believe that these proposed security requirements would have a significant economic impact. DEA believes that the security requirements proposed here are necessitated by the value of pseudoephedrine, ephedrine and phenylpropanolamine on the black market, and the value of amphetamine and methamphetamine on the streets. The benefits of preventing the diversion of these drugs far outweigh the costs.

DEA is requesting manufacturers, distributors, importers, and exporters of List I chemicals to comment on the specific types of security measures that are currently utilized in their facilities and the specific costs that will be necessary to adopt the proposed new security requirements.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $113,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a

major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and II chemicals, Security measures.

For the reasons set out above, 21 CFR part 1309 is proposed to be amended as follows:

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS, AND EXPORTERS OF LIST I CHEMICALS

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

§ 1309.24 [Amended]

2. § 1309.24(k) is proposed to be amended by removing the phrase ''§§ 1309.71–1309.73'' and replacing it with the phrase ''§§ 1309.71–1309.74'.

3. Section 1309.74 is proposed to be added to read as follows:

§ 1309.74 Security requirements for pseudoephedrine, ephedrine, and phenylpropanolamine.

(a) Manufacturers, distributors, importers, and exporters must store pseudoephedrine, ephedrine, and phenylpropanolamine raw materials, bulk materials awaiting further processing, and finished products in a secure storage area. The secure area may be a safe or steel cabinet, as specified in paragraph (c) of this section; a secure room that meets the requirements of paragraph (d) of this section; a cage that meets the requirements of paragraph (e) of this section; or other areas approved by the Administrator (paragraphs (f) and (g) of this section). Secure rooms, cages, and other areas approved by the Administrator must have an alarm system that meets the requirements of paragraph (b) of this section. A safe or steel cabinet must have an alarm system if a total of 1 kilogram or more, combined, of pseudoephedrine, ephedrine, and phenylpropanolamine materials are stored at any one time.

(b) The secure storage area must be equipped with an alarm system that, upon attempted unauthorized entry, transmits a signal directly to a central protection company, a local or State police agency that has a legal duty to respond, a 24-hour control station operated by the registrant, or such other protection as the Administrator may approve.

(c) Where small quantities (less than one (1.0) kilogram of pseudoephedrine, ephedrine or phenylpropanolamine, combined) permit, pseudoephedrine, ephedrine, and phenylpropanolamine may be stored in a safe or steel cabinet that meets the following requirements:

(1) The safe or steel cabinet must conform to the following specifications or the equivalent: 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock manipulation, and 20 man-hours against radiological techniques; and

(2) If the safe or cabinet weighs less than 750 pounds, it must be bolted or cemented to the floor or wall in such a way that it cannot be readily removed.

(d) Pseudoephedrine, ephedrine, and phenylpropanolamine may be stored in a secure room with perimeter security that limits access during working hours and provides security after working hours. The secure room must be equipped with self-closing, self-locking doors constructed of substantial material. A door that is kept closed and locked at all times when not in use and when in use is kept under direct observation of a responsible employee or agent of the registrant is permitted in lieu of a self-closing, self-locking door. Doors may be sliding or hinged. Where hinges are mounted on the outside, the hinges must be sealed, welded, or otherwise constructed to inhibit removal. Locking devices for such doors must be of either the multiple-position combination or key lock type and must comply with one of the following:

(1) In the case of key locks, the lock must require key control that restricts access to a limited number of employees.

(2) In the case of combination locks, the combination must be limited to a minimum number of employees and must be changed upon termination of employment of an employee having knowledge of the combination.

(e) Pseudoephedrine, ephedrine, and phenylpropanolamine may be stored in a cage, located within a building on the premises, meeting the following specifications:

(1) The cage walls must be constructed of not less than No.10 gauge steel fabric mounted on steel posts. The posts must be:

(i) At least one inch in diameter;

(ii) Set in concrete or installed with lag bolts that are pinned or brazed; and

(iii) Placed no more than ten feet apart with horizontal one and one-half inch reinforcements every sixty inches.

(2) The cage must have a mesh construction with openings of not more than two and one-half inches across the square.

(3) The cage must have a ceiling constructed of the same material or, in the alternative, a cage must be erected which reaches and is securely attached to the structural ceiling of the building. A lighter gauge mesh may be used for the ceilings of large enclosed areas if walls are at least 14 feet in height.

(4) The cage must be equipped with a door constructed of No. 10 gauge steel fabric on a metal door frame in a metal door flange, and which conforms to all the requirements of paragraph (d) of this section in all other respects.

(f) Pseudoephedrine, ephedrine, and phenylpropanolamine may be stored in an enclosure of masonry or other material, approved in writing by the Administrator as providing security comparable to a cage.

(g) Pseudoephedrine, ephedrine, and phenylpropanolamine may be stored in such other secure storage areas as may be approved by the Administrator after considering the factors listed in § 1309.71(b)(1) through (8).

(h) Nonregulated chemicals and other materials may be stored with pseudoephedrine, ephedrine, and phenylpropanolamine in any of the secure storage areas required by this section, if permission for the storage of non-controlled items is obtained in advance, in writing, from the DEA Special Agent in Charge for the area in which the storage area is located. Any permission granted must be based on the Special Agent in Charge's written determination that such non-segregated storage does not diminish the effectiveness of security for pseudoephedrine, ephedrine, and phenylpropanolamine.

(i) The pseudoephedrine, ephedrine, and phenylpropanolamine storage areas must be accessible only to an absolute minimum number of specifically authorized employees. When it is necessary for employee maintenance personnel, nonemployee maintenance personnel, business guests, or visitors to be present in or pass through pseudoephedrine, ephedrine, and phenylpropanolamine storage areas, the registrant must provide for adequate observation of the area by an employee specifically authorized in writing.

Dated: July 23, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 04–17356 Filed 7–29–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2003–15149]

RIN 2125–AE98

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Maintaining Traffic Sign Retroreflectivity

AGENCY: Federal Highway Administration (FHWA), (DOT).

ACTION: Notice of proposed amendments (NPA) to the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD); request for comments.

SUMMARY: The MUTCD, approved by the Federal Highway Administration, is incorporated by reference at 23 CFR part 655, subpart F. The FHWA proposes to amend the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) to include methods to maintain traffic sign retroreflectivity. The proposed maintenance methods would establish a basis for improving nighttime visibility of traffic signs to promote safety, enhance traffic operations, and facilitate comfort and convenience for all drivers. The proposed changes would be designated as Revision No. 2 to the 2003 Edition of the MUTCD.

DATES: Comments must be received on or before October 28, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov* (follow the on-line instructions for submitted comments). All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78), or may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Hatzi, Office of Safety Design (HSA–10), (202) 366–8036, or Raymond Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

Interested parties may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission, retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

The MUTCD is available for inspection and copying as prescribed in 49 CFR part 7 and on the FHWA's Web site at *http://mutcd.fhwa.dot.gov.* This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to Section 1A.11 Relation to Other Documents, Section 2A.09 Minimum Retroreflectivity, and Section 2A.22 Maintenance concerning sign retroreflectivity. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice and would be incorporated by reference into 23 CFR part 655, subpart F. The 2003 Edition of the MUTCD with Revision No. 2 changes incorporated as proposed in this amendment is also available on the Web site.

One of the FHWA's primary goals is to improve safety on the nation's roads.[1] Approximately 42,000 people have been killed on U.S. roads each year for the last eight years.[2] While nearly a quarter of travel occurs at night,[3] about one-half of traffic fatalities occur during nighttime hours.[4] There are many reasons for this disparity. However, the FHWA expects that improvements to the nighttime visibility of traffic signs will help drivers better navigate the roads at night and thus promote safety and mobility.

The purpose of traffic control devices, as well as the principles for their use, is to promote highway safety and efficiency by providing for the orderly movement of all road users. Those devices notify road users of regulations and provide warning and guidance needed for the safe, uniform, and efficient operation of traffic.

The MUTCD requires that traffic signs be illuminated or retroreflective to enhance nighttime visibility.[5] Most sign faces are made with retroreflective sheeting material to enhance the visibility of signs and their messages at night. Retroreflectivity, one factor associated with night visibility, is the property of a material to redirect light back towards its source. In the case of a traffic sign, light is redirected back from the sign face toward the vehicle's headlamps, making the sign visible to the driver. Available sign sheeting materials offer different degrees of retroreflectivity, making some signs

[1] Fiscal Year 2003 Performance Plan. This document can be viewed at the Internet Web site: *http://www.fhwa.dot.gov/reports/2003plan/index.htm.*

[2] "Traffic Safety Facts 2001: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System," Publication NO. DOT HS 809484 December 2002. This document can be viewed at the Internet Web site: *http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/ncsa/tsfann/tsf2001.pdf.*

[3] Federal Highway Administration and The Bureau of Transportation Statistics, 2001 National Household Travel Survey, (23.3% of vehicle miles traveled occur between 7 p.m. and 6 a.m.). This document can be viewed at the Internet Web site: *http://nhts.ornl.gov.*

[4] "Traffic Safety Facts 2001: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System," Publication NO. DOT HS 809484 December 2002. This document can be viewed at Internet Web site: *http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/ncsa/tsfann/tsf2001.pdf.*

[5] "Manual on Uniform Traffic Control Devices, 2003 Edition," U.S. Department of Transportation, Federal Highway Administration, Washington, DC, November 2003. This document can be viewed at the Internet Web site: *http://mutcd.fhwa.dot.gov.*

appear brighter than others. The brightness of the sign is also a function of the age of the sign face material, as well as the size of vehicle, type of headlamps, the driver's visual capabilities, and the environmental conditions. In general, the higher the retroreflectivity level the brighter the sign will appear to a driver.

The retroreflectivity of signs gradually deteriorates over time making signs progressively less visible (*i.e.*, bright) at night. As signs lose their retroreflective properties, their effectiveness in communicating regulatory, warning, and guidance messages to road users diminishes to the point where they cannot be seen or read. Thus to maintain effectiveness, signs must be replaced before they reach the end of their useful retroreflective life. Until recently, little information was available about the levels of retroreflectivity necessary to meet the needs of drivers and thereby define the useful life of signs. FHWA research has led to the development of minimum maintained levels of traffic sign retroreflectivity for regulatory, warning, and guide signs for currently available materials, vehicle fleet characteristics, and capabilities of the driving population. Further, new methods have evolved for assessing and managing the retroreflectivity of existing signs on the road network. Sign assessment methods involve the evaluation of a sign's retroreflectivity by nighttime visual inspection or measurement of retroreflectivity using an appropriate instrument. Visual and numeric criteria based upon the minimum retroreflectivity needs of drivers are used to judge whether the sign has adequate night visibility. Sign management methods involve tracking or predicting the retroreflective life of individual signs, and scheduling for replacement those approaching the minimum levels.

Darkness significantly hides many of the visual cues used by drivers to interpret roadway alignment (including objects such as signs, pavement markings, and roadside barriers). Retroreflective treatments or illumination increases the visibility of these objects to provide information directly or restore the visual cues needed by the driver to safely navigate the road at night.

Maintaining minimum levels of traffic sign retroreflectivity on the nation's roads is becoming increasingly important as the driving population ages. Older drivers have diminished visual capabilities that are most apparent under dark conditions.[6] Currently, 26.2 million drivers are 65 or older and by 2010 an estimated 33.7 million drivers will be 65 or older.[7] Traffic signs that are easier to see and read can help all drivers (not just the elderly) at night.

The MUTCD, approved by the Federal Highway Administration, is incorporated by reference in 23 CFR part 655, subpart F, and is recognized as the national standard for traffic control devices used on all public roads. The Secretary of Transportation's authority to establish these standards was established in 23 U.S.C. 109, and the Secretary has delegated that authority to the Federal Highway Administration, as stated in 49 CFR 1.48(b)(8). The FHWA is proposing changes to the MUTCD to improve night visibility for drivers by establishing a benchmark for adequacy of traffic signs that are currently in place and those that will be installed in the future. Improved night visibility of traffic signs is expected to promote safety and mobility on the nation's roads.

History of Sign Retroreflectivity

Requirements for nighttime sign visibility have been included in every version of the MUTCD, since the first edition in 1935. The 2003 Edition of the MUTCD continues to address the visibility of signs.[8] Some of the pertinent MUTCD sections include: Sections 1A.03 through 1A.05, dealing with design, placement, operation, and maintenance of traffic control devices, and Section 2A.22 Maintenance. Sign retroreflectivity is specifically addressed in Section 2A.08 Retroreflectivity and Illumination, which states, ''[r]egulatory, warning, and guide signs shall be retroreflective or illuminated to show the same shape and similar color by both day and night, unless specifically stated otherwise in the text discussion in this Manual of a particular sign or group of signs.'' This language has essentially remained unchanged since 1971. The FHWA also added Section 2A.09 Minimum Retroreflectivity Levels in the MUTCD Millennium Edition. Section 2A.09 serves as a placeholder for the results of the rulemaking addressed herein.

In 1993, the Congress directed the Secretary of Transportation to revise the MUTCD to include a standard for minimum levels of retroreflectivity that must be maintained for traffic signs and pavement markings, which apply to all roads open to public travel.[9] The FHWA already had an active research program investigating the nighttime visibility of traffic control devices to meet driver needs. In 1993, the FHWA responded to the congressional mandate by publishing a set of research recommendations for minimum maintained sign retroreflectivity levels.[10] A series of tables was presented in the research report to establish minimum maintained retroreflectivity levels for regulatory, warning, and side-mounted and overhead guide signs. These tables set minimum levels for various factors including sign size, roadway speed limit, type of sign face material, and nature of the sign legend.

In 1995, three national workshops were conducted to educate State and local highway agency personnel and solicit their input regarding the initial set of minimum maintained sign retroreflectivity levels. The findings from these workshops, combined with an increased knowledge of both driver needs and the performance of retroreflective materials and their durability, were used to revise the initial set of minimum maintained retroreflectivity levels. The revised minimum levels were published in 1998 in a report entitled ''An Implementation Guide for Minimum Retroreflectivity Requirements for Traffic Signs.''[11] One of the most evident changes was the removal of minimum levels of retroreflectivity for overhead signs because of unresolved issues with vehicle headlamp performance specifications and the difficulty of measuring overhead sign retroreflectivity.

[6] Information about this research is summarized on page 206 of the ''Highway Design Handbook for Older Drivers and Pedestrians,'' Report number FHWA–RD–01–103, published by the FHWA Office of Safety Research and Development, 2001. It is available for purchase from the Technical Information Service, Springfield, Virginia 22161, (703) 605–6000. Internet Web site address at *http://www.ntis.gov*.

[7] Federal Highway Administration and the Bureau of Transportation Statistics, 2001 National Household Travel Survey. This document can be viewed at the Internet Web site: *http://nhts.ornl.gov*.

[8] ''Manual on Uniform Traffic Control Devices, 2003 Edition,'' U.S. Department of Transportation, Federal Highway Administration, Washington, DC, October 2003. This document can be viewed at the Internet Web site: *http://mutcd.fhwa.dot.gov*.

[9] United States Department of Transportation and Related Agencies Appropriations Act of 1993, Public Law 102–388, 106 Stat. 1520, Section 406.

[10] Paniati, J.F. and Mace, D.J., ''Minimum Retroreflectivity Requirements for Traffic Signs,'' FHWA–RD–93–077, U.S. Department of Transportation, Federal Highway Administration, Washington, DC, October 1993.

[11] McGee, H.W. and Paniati, J. F., ''An Implementation Guide for Minimum Retroreflectivity Requirements for Traffic Signs,'' FHWA–RD–97–052, U.S. Department of Transportation, Federal Highway Administration, Washington, DC, 1998.

Also in 1998, a report entitled ''Impacts on State and Local Agencies for Maintaining Traffic Signs Within Minimum Retroreflectivity Guidelines'' presented the findings of a survey and analyses related to the expected impacts of the proposed minimum maintained retroreflectivity levels.[12] The report estimated that about five percent of the signs under State jurisdiction and eight percent of the signs under local jurisdiction would not meet the proposed minimum levels and would have to be replaced. The report concluded that the one-time replacement costs would be $32 million for State agencies, and $144 million for local agencies. It also stated that the cost impacts to agencies would be small if the minimum maintained retroreflectivity levels were phased in over a sufficiently long period of time.

Near completion of the 1998 work on the revised minimum levels, the National Highway Traffic Safety Administration (NHTSA) revised the Federal Motor Vehicle Safety Standard Number 108, Lamps, Reflective Devices, and Associated Equipment (FMVSS 108), so that vehicle owners could easily aim and adjust their headlamps and therefore reduce the variability associated with headlamp aim. FMVSS 108 is the document that sets the minimum and maximum luminous intensities for headlamps, headlamp mounting heights, and standardization of headlamps on *new* vehicles sold in the U.S. after 1968. Since that time, there have been several changes. Because of these changes, the FHWA conducted additional research to develop minimum maintained retroreflectivity levels for overhead guide signs and street name signs, which were not included in the minimum levels published in 1998. The research for overhead guide signs and street name signs was completed in early 2001.[13]

One of the significant findings of the research was the need to update some of the fundamental inputs on headlights, vehicle type (and hence headlight height), and driver capabilities to reflect the current vehicle fleet and older driver population in the development of minimum maintained retroreflectivity levels for traffic signs. Consequently, additional research was sponsored by the FHWA to update the inputs and develop an updated set of minimum maintained retroreflectivity levels for traffic signs in the U.S. This work was completed in 2003 and has become the basis for this rulemaking.[14]

At least two significant events happened during the development of the proposed minimum maintained retroreflectivity levels. The first was the formation of the Special Task Force on Retroreflectivity by the AASHTO Standing Committee on Highways. The objective of the Task Force was to review the proposed minimum maintained levels for retroreflectivity (both traffic signs and pavement markings) and provide implementation recommendations to the FHWA. In 2000, the AASHTO's Board of Directors approved the Task Force's resolution that included several recommendations.[15] One of the key recommendations was that the minimum maintained retroreflectivity levels for traffic signs not be included in the MUTCD. Another key recommendation was that the proposed minimum maintained retroreflectivity levels for traffic signs should be revised to be clear and unambiguous and consolidated so they can be easily and properly applied. The AASHTO also recommended a six year phase-in compliance period.

The second significant activity occurred during the summer of 2002. The FHWA conducted a second round of national workshops to solicit input from transportation agency personnel concerning the implications of the revised minimum maintained retroreflectivity levels for traffic signs and the proposed changes to the MUTCD to adopt the minimum levels.[16] Feedback from these workshops led to refinement of the consolidated table of minimum maintained retroreflectivity levels, definition of methods for assessing and managing the retroreflectivity of in-place signs, formulation of language for the MUTCD, and development of implementation recommendations.

Proposed Amendment

The purpose of this notice of proposed amendments (NPA) is to obtain public comment on proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD) to include methods to maintain traffic sign retroreflectivity. The FHWA seeks comment on the proposed changes to the Introduction, Section 1A.11 Relation to Other Publications, Section 2A.09 Minimum Retroreflectivity, and 2A.22 Maintenance. Minimum maintained retroreflectivity levels associated with the above-mentioned methods are contained in the FHWA document ''Maintaining Traffic Sign Retroreflectivity.''[17] ''Maintaining Traffic Sign Retroreflectivity'' is included as an appendix to the preamble.

The American Society of Testing Materials (ASTM) definition of the term ''standard'' is ''a concept established by authority, custom, or agreement to serve as a model or rule in a measurement of quality or the establishment of a practice or procedure.''[18] This proposed amendment to the MUTCD is intended to meet that definition. In addition, feedback received during FHWA sponsored workshops reinforced the importance of not only sign retroreflectivity, but also nighttime visibility of signs. This feedback led to the emphasis in this proposal on actual methods to assess and maintain sign retroreflectivity, and not just establishment of minimum thresholds for retroreflectivity.

The proposed changes to the MUTCD by sections are as follows:

Discussion of Proposed Amendments to the Introduction

1. In the Introduction, the FHWA proposes to add to the STANDARD statement a seven-year target compliance date for Section 2A.09 Minimum Retroreflectivity. The FHWA proposes a phase-in target compliance period for implementation of seven years for ground mounted signs and ten years for overhead signs from the effective date of the final rule for Revision No. 2 of the 2003 MUTCD to

[12] McGee, H.W. and Taori, S., ''Impacts on State and Local Agencies for Maintaining Traffic Signs Within Retroreflectivity Guidelines,'' FHWA–RD–97–053, U.S. Department of Transportation, Federal Highway Administration, Washington, DC 1998.

[13] Carlson, P.J. and Hawkins, H.G., ''Minimum Retroreflectivity Levels for Overhead Guide Signs and Street Name Signs,'' FHWA–RD–03–082, U.S. Department of Transportation, Federal Highway Administration, Washington, DC, 2003. A copy of this report is available on the docket.

[14] Carlson, P.J. and Hawkins, H.G., ''Updated Minimum Retroreflectivity Levels for Traffic Signs,'' FHWA–RD–03–081, U.S. Department of Transportation, Federal Highway Administration, Washington, DC, 2003. A copy of this report is available on the docket.

[15] AASHTO Policy Resolution, ''Minimum Retroreflectivity of Signs and Pavement Markings,'' December 2000. A copy of this AASHTO resolution is available at the following Web site: *http://safety.fhwa.dot.gov/fourthlevel/retrost.htm.*

[16] Hawkins, H.G., Carlson, P.J., Schertz, G.F., and Opiela, K.S., ''Workshops on Nighttime Visibility of Traffic Signs: Summary of Workshop Findings,'' FHWA–SA–03–002, U.S. Department of Transportation, Federal Highway Administration, Washington, DC, 2003.

[17] A copy of the FHWA report ''Maintaining Traffic Sign Retroreflectivity,'' Publication No. FHWA–SA–03–027, October 2003 is available as an appendix to the preamble.

[18] ''Compilation of ASTM [American Society of Testing Materials] Standard Definitions'', Eighth Edition, ASTM Publication Code Number 03–001094–42, 1994. A copy of this document is available from the ASTM at 1916 Race St., Philadelphia, PA 19103. Internet at the following URL: *http://www.astm.org.*

minimize any impact on State or local governments. The FHWA believes a target compliance period of seven years would allow State and local agencies to replace their engineering grade sign sheeting within a normal replacement period of a commonly-accepted seven year service life. The FHWA proposes a ten year compliance period for overhead signs to allow an extended period of time due to the longer service life typically used for those signs.

Discussion of Proposed Amendments to Part 1—General

2. In Section 1A.11 Relation to Other Publications, the FHWA proposes to add the publication ''Maintaining Traffic Sign Retroreflectivity'' to the list of other publications that are useful sources. ''Maintaining Traffic Sign Retroreflectivity'' is included as an appendix to the preamble.

Discussion of Proposed Amendments to Part 2—Signs

3. In Section 2A.09 Minimum Retroreflectivity Levels, the FHWA proposes changing the title of the section by deleting the word ''levels'' from the title to better describe the content of the section. The FHWA proposes to replace the SUPPORT statement with new SUPPORT, GUIDANCE, and OPTION statements that refer to minimum sign retroreflectivity.

In the SUPPORT statement, the FHWA proposes to provide a reference to Section 2A.22 Maintenance, stating that retroreflectivity is one of several factors associated with maintaining nighttime sign visibility.

In the GUIDANCE statement, the FHWA proposes to indicate that except for those signs specifically identified in the OPTION statement, one or more of the assessment or management methods described in this section should be used to maintain sign retroreflectivity above the minimum levels identified in the FHWA document ''Maintaining Traffic Sign Retroreflectivity.''[19] The methods are visual nighttime inspection (including three procedures: calibration signs, consistent parameters, and comparison panels), measured sign retroreflectivity, expected sign life, blanket replacement, and control signs. The GUIDANCE statement includes a brief description of each method and the following SUPPORT statement includes a reference to ''Maintaining Traffic Sign Retroreflectivity'' that provides more information about these methods and their association to minimum maintained retroreflectivity levels for traffic signs. As part of the descriptions of the various methods in the GUIDANCE, the FHWA proposes to include a statement that signs that have retroreflectivity below the minimum levels should be replaced.

In the OPTION statement, the FHWA proposes to list several sign series that agencies may exclude from the proposed assessment methods and minimum maintained sign retroreflectivity levels. The FHWA proposes to exclude these sign series, because additional research is needed to support establishment of minimum retroreflectivity levels for these signs. The sign series that the FHWA proposes to exclude are: (1) Parking, Standing, and Stopping signs (R7 and R8 series), (2) Walking, Hitchhiking, and Crossing signs (R9 series, R10–1 through R10–4b), (3) Adopt-A-Highway series, (4) All signs with blue or brown backgrounds, and (5) Bikeway signs that are intended for exclusive use by bicyclists and/or pedestrians. This list will not exclude those signs from existing MUTCD retroreflectivity and maintenance requirements and guidance.

4. In Section 2A.22 Maintenance, the FHWA proposes changing the first paragraph of the GUIDANCE statement by replacing the phrase ''adequate retroreflectivity'' with ''retroreflectivity levels as indicated in Section 2A.09.'' The reference to Section 2A.09 Minimum Retroreflectivity, enables readers to access information specific to retroreflectivity more easily. The FHWA proposes a new sentence that reads, ''Maintenance activities should consider proper position, cleanliness, legibility, and daytime and nighttime visibility of a sign.''

Appendix to the Preamble—Maintaining Traffic Sign Retroreflectivity

Traffic signs provide an important means of communicating information to road users and they need to be visible to be effective. The 2003 Manual on Uniform Traffic Control Devices (MUTCD) addresses sign visibility in several sections, including 1A.03, 1A.04, 1A.05, 2A.08, and 2A.22. Visibility is addressed in portions of these sections through factors such as design, placement, operation, maintenance, and uniformity.

The concept of visibility encompasses many different considerations and is difficult to quantify as an overall measure. Specific metrics such as conspicuity, legibility, or retroreflectivity are used to represent the various elements that contribute to visibility. Conspicuity is the ability to identify a target (such as a sign) from its surroundings. It is what helps the user to first see a sign. Legibility is the ability to identify the message (content) of the target. It is what helps the user to read the sign.

The nighttime environment presents many sign visibility challenges. At night, road users cannot see as many visual cues as they can in the day. This places greater reliance on signs and other traffic control devices. To provide nighttime sign visibility, most signs are made from retroreflective sheeting. Retroreflectivity is the property of a material to redirect light back toward the originating source. It is what helps make a sign conspicuous and legible.

Existing procedures and technologies for measuring sign retroreflectivity provide one, but not the only, metric for quantifying nighttime sign visibility. The Federal Highway Administration (FHWA) has focused significant attention on retroreflectivity in recent years, including developing research recommendations for minimum maintained levels of sign retroreflectivity.

Sign location and orientation also impact sign visibility. Signs placed outside of the driver's cone of vision may not be seen by the driver even though they meet other visibility criteria. Likewise, signs behind obstructions (such as a structure or vegetation) may meet some visibility criteria, but can't be seen by drivers. To provide maximum effectiveness, signs should be designed, placed, and maintained in a manner that is consistent with MUTCD guidelines.

This document provides recommendations and general information about minimum maintained retroreflectivity levels and the methods that can be used to maintain sign retroreflectivity. Information contained in this document is intended for policy-makers and managers.

Retroreflectivity Maintenance

There are several methods that agencies can use to maintain sign retroreflectivity above the minimum maintained retroreflectivity levels that FHWA has developed through research. These minimum retroreflectivity levels were developed to provide transportation agencies with a general target for maintaining sign retroreflectivity. The existence of minimum retroreflectivity levels is not intended to imply that agencies need to measure the retroreflectivity of every sign in their jurisdictions. Instead, these methods provide agencies with options

[19] A copy of the FHWA report ''Maintaining Traffic Sign Retroreflectivity,'' Publication No. FHWA–SA–03–027, October 2003 is available as an appendix to the preamble.

that will help to improve nighttime sign visibility.

Sign maintenance methods can be divided into two groups—assessment methods and management methods. Assessment methods involve the actual evaluation of individual signs, while management methods involve tracking and/or predicting the retroreflectivity of signs. The FHWA has identified several assessment and management methods for maintaining sign retroreflectivity in a manner that is consistent with the minimum retroreflectivity levels. Agencies also have the flexibility to develop their own methods for maintaining sign retroreflectivity.

Assessment Methods

The assessment methods require evaluation of individual signs within an agency's jurisdiction. There are two basic assessment methods—visual assessment and retroreflectivity measurement.

Visual Nighttime Inspection Method

In the visual nighttime inspection method, agency personnel assess the nighttime visibility of their signs. The visual inspection method is probably the most consistent with current practices at many agencies. Visual inspections are also recommended in Section 2A.22 of the MUTCD.

In the visual inspection method, the inspector assesses the visibility and retroreflectivity of the traffic signs as he/she approaches the signs. Signs need to be replaced if they do not meet the comparison defined in the appropriate procedure. The following recommendations provide general guidance on how to conduct the inspections:

- Agencies develop guidelines and procedures for inspectors to use in conducting the nighttime inspections. Inspectors are trained on the use of these procedures.
- The inspection is conducted at normal roadway operating speeds. If it is necessary to slow or stop the vehicle to read the sign, the sign typically needs to be replaced. Signs are normally inspected from the travel lane.
- The inspection is conducted using the low beam headlights. It is better not to use the bright beams for inspections as they create higher illuminance levels at the sign and make it appear brighter than it would to a driver using low beams.
- Signs are normally evaluated at a typical viewing distance for each sign, one that provides a driver with adequate time for an appropriate response.

In addition to the above recommendations, one or more of the following procedures are used in conducting visual nighttime inspections.

Calibration Signs Procedure

Calibration signs are viewed prior to conducting the nighttime inspection. The calibration signs have retroreflectivity levels at or above the minimum levels. These signs are set up where the inspectors can view the calibration signs in a manner similar to how they will conduct the nighttime inspection. The inspector uses the visual appearance of the calibration sign to establish the evaluation threshold for that night's inspection activities. The following factors provide additional information on the use of this procedure:

- Calibration signs are needed for each color of sign for which there are minimum levels.
- The calibration signs are viewed at typical viewing distances and from the same vehicle that will be used for conducting the inspections.
- The calibration signs need to be properly stored between inspections so that the retroreflectivity of the calibration signs does not deteriorate over time. Calibration sign retroreflectivity is checked at periodic intervals to ensure that the calibration panels have the appropriate retroreflectivity levels.
- Field signs need to be replaced if the inspector judges a sign to be less bright than the appropriate calibration sign.

Consistent Parameters Procedure

The same factors that were used to develop the minimum levels are used in conducting the inspections. These factors include:

- Using a full-size sport utility vehicle or pick-up to conduct the inspection.
- Using a model year 2000 or newer vehicle for the inspection.
- Using an inspector age 60 or older.
- Signs are viewed at the typical viewing distance for that sign.
- Signs need to be replaced if they are not legible to the inspector.

Comparison Panels Procedure

Small comparison panels are used to assess the retroreflectivity of questionable signs. The comparison panels are fabricated at retroreflectivity levels that are at or above the minimum levels. When the retroreflectivity of a sign is considered to be questionable, a comparison panel is attached to the sign and the sign/panel combination is viewed by the inspector. If the comparison panel appears brighter than the sign, the sign needs to be replaced.

Measured Retroreflectivity Method

In this method, the retroreflectivity of a sign is measured and directly compared to the minimum level appropriate to that sign. If the sign retroreflectivity is lower than the minimum levels, the sign needs to be replaced. The following factors provide additional information about measuring sign retroreflectivity:

- ASTM E1709, Standard Test Method for Measurement of Retroreflective Signs Using a Portable Retroreflectometer, provides a standard method for measuring sign retroreflectivity using a handheld retroreflectometer.
- A sign needs to be replaced if the average retroreflectivity value is less than the appropriate minimum level.

Management Methods

The management methods provide an agency with the ability to maintain sign retroreflectivity without having to devote significant effort into assessing individual signs. There are three basic types of management methods—replacing signs based on age, blanket replacement of large numbers of signs at appropriate intervals, and using a sample of control signs to determine when to replace equivalent signs.

Expected Sign Life Method

In this method, individual signs are replaced before they reach the end of their expected service life. The expected service life is based on the time required for the retroreflective material to degrade to the minimum retroreflectivity levels. The following factors provide additional information about using this method:

- The expected service life of a sign can be based on several different sources of information, such as:

—Sign sheeting warranties.
—Sign test deck measurements.
—Measurements of actual signs.

- An agency will need a method of identifying the age of individual signs. Potential methods include:

—A sticker or other label attached to the sign that identifies the year of fabrication, installation, or replacement.
—A sign management system that can identify the age of individual signs.

Blanket Replacement Method

In this method, an agency replaces all the signs in an area/corridor, or of a given type, at specified intervals. An agency that uses this method does not need to track the age or assess the retroreflectivity of individual signs. The following factors provide additional

information about the use of this procedure:

- Replacement zones can be based on an area, corridor, or sign type.
- The replacement interval for the area/corridor, or sign type, is based on the expected sign life for the affected signs.
- All signs within a replacement area/corridor/type are typically replaced, even if the sign was recently installed.

Control Sign Method

In this method, a control sample of signs is used to represent the total population of an agency's signs. The retroreflectivity of the control signs is monitored at appropriate intervals and sign replacement is based on the performance of the control signs. The following factors provide additional information about using this method:

- An agency develops a sampling plan to determine the appropriate number of control signs needed to represent the agency's sign population.
- Control signs may be actual signs in the field or signs installed in a maintenance yard to serve specifically as control signs.
- The retroreflectivity of the control signs should be monitored following the procedures outlined for one of the assessment methods.
- All field signs represented by the control sample need to be replaced before the retroreflectivity levels of the control sample reach the minimum levels.

Sign Replacement

All of the sign retroreflectivity maintenance methods indicate that signs need to be replaced when they do not meet the threshold criteria for the individual method. In maintaining sign retroreflectivity, an agency may want to consider the interval before the next assessment or management event as part of the sign evaluation and replacement process. In some cases, it may be appropriate to replace a sign even though it is above the threshold criteria because it could be expected to drop below the threshold criteria before the next assessment/management event.

Sign Exclusions

The following signs may be excluded from the various methods of maintaining sign retroreflectivity:

- Parking, Standing, and Stopping signs (R7 and R8 series).
- Walking/Hitchhiking/Crossing signs (R9 series, R10–1 through R10–4b).
- Adopt-A-Highway signs.
- All signs with blue or brown backgrounds.
- Bikeways which are not immediately adjacent to a roadway and that are intended for exclusive use by bicyclists and/or pedestrians.

Minimum Retroreflectivity Levels

Since the early 1990s, the FHWA has sponsored several different efforts to develop research recommendations for minimum retroreflectivity levels for traffic signs. These efforts represent various attempts to define and refine the concept of minimum maintained sign retroreflectivity. Initial minimum retroreflectivity levels were developed through research in 1993 (1). These levels were revised in 1998 through further research (2). Updated minimum levels were developed in 2003 (3) and are the ones that FHWA proposes for use. A paper describes the evolution of the research to develop minimum levels of sign retroreflectivity (4).

The updated minimum levels of sign retroreflectivity are generally similar in magnitude to levels published previously, but represent several refinements and updates. The following improvements were incorporated into the 2003 updated levels:

- An improved computer model was used to develop the minimum levels.
- Additional sheeting types were incorporated into the minimum levels.
- Headlamp (headlight) performance was updated to represent the model year 2000 vehicle fleet.
- Vehicle size was increased to represent the greater prevalence of sport utility vehicles and pick-up trucks.
- The luminance level needed for legibility was increased to better accommodate older drivers.
- Minimum retroreflectivity levels were consolidated across more sheeting types to reduce the number of minimum levels.

The updated minimum maintained retroreflectivity levels are shown in the following table. They represent the most current research recommendations, and are recommended by FHWA, but are limited to the current knowledge of the nighttime luminance requirements of traffic signs. The assumptions and limitations associated with the development of these levels are described in the research report (3). It should be noted that there may be situations where, based on engineering judgment, an agency may want to provide greater retroreflectivity.

MINIMUM MAINTAINED RETROREFLECTIVITY LEVELS

Sign color	Criteria	Sheeting type (ASTM D4956–01a)					
		I	II	III	VII	VIII	IX
White on Red	See Note 1	35//7					
Black on Orange or Yellow	See Note 2	*	50				
	See Note 3	*	75				
Black on White		50					
White on Green	Overhead	*//7	*//15	*//25	250//25		
	Shoulder	*//7	120//15				

Notes:

Levels in cells represent legend retroreflectivity // background retroreflectivity (for positive contrast signs). Units are cd/lx/m^2 measured at an observation angle of 0.2° and an entrance angle of −4.0°.

1 Minimum Contrast Ratio ≥ 3:1 (white retroreflectivity ÷ red retroreflectivity).

2 For text signs measuring 48 inches or more and all bold symbol signs.

3 For text signs measuring less than 48 inches and all fine symbol signs.

* Sheeting type should not be used.

MINIMUM MAINTAINED RETROREFLECTIVITY LEVELS—Continued

Bold Symbol Signs	• W1–1—Turn. • W1–2—Curve. • W1–3—Reverse Turn. • W1–4—Reverse Curve. • W1–5—Winding Road. • W1–6—Large Single Arrow. • W1–7—Large Double Arrow. • W1–8—Chevron. • W1–9—Turn & Advisory Speed. • W1–10—Horizontal Alignment & Intersection. • W2–1—Cross Road. • W2–2, W2–3—Side Road. • W2–4—T Intersection. • W2–5—Y Intersection. • W2–6—Circular Intersection. • W3–1a—Stop Ahead. • W3–2a—Yield Ahead. • W3–3—Signal Ahead. • W4–3—Added Lane. • W6–1—Divided Highway Begins. • W6–2—Divided Highway Ends. • W6–3—Two-Way Traffic. • W10–1, –2, –3, –4—Highway-Railroad Intersection Advance Warning. • W11–2—Pedestrian Crossing. • W11–3—Deer Crossing. • W11–4—Cattle Crossing. • W11–5—Farm Equipment. • W11–5p, –6p, –7p—Pointing Arrow Plaques. • W11–8—Fire Station. • W11–10—Truck Crossing. • W12–1—Double Arrow.
Fine Symbol Signs	All symbol signs not listed in the bold category are considered fine symbol signs.
Special Case Signs (for requirements in addition to yellow color addressed in above table).	• W3–1a—Stop Ahead. • Red retroreflectivity ≥ 7. • W3–2a—Yield Ahead • Red retroreflectivity ≥ 7, White retroreflectivity ≥ 35. • W3–3—Signal Ahead. • Red retroreflectivity ≥ 7, Green retroreflectivity ≥ 7. • W14–3—No Passing Zone, W4–4p—Cross Traffic Does Not Stop, or W13–2, –3, –1, –5—Ramp & Curve Speed Advisory Plaques. • Use largest sign dimension to find proper category in above table.

References

1. Paniati, J.F. and Mace, D.J., Minimum Retroreflectivity Requirements for Traffic Signs, Technical Report. FHWA–RD–93–077, Federal Highway Administration, Washington, DC, October 1993.
2. McGee, H.W. and Paniati, J.F., An Implementation Guide for Minimum Retroreflectivity Requirements for Traffic Signs. FHWA–RD–97–052, Federal Highway Administration, Washington, DC, 1998.
3. Carlson, P.J. and Hawkins, H.G., Updated Minimum Retroreflectivity Levels for Traffic Signs. FHWA–RD–03–081, Federal Highway Administration, Washington, DC, 2003.
4. Carlson, P.J., Hawkins, H.G., Schertz, G.F., Opiela, K.S., and Mace, D.J., Developing Updated Minimum In-Service Retroreflectivity Levels for Traffic Signs, accepted for publication in the Transportation Research Record, Transportation Research Board, Washington, DC, 2003.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest in the retroreflectivity of traffic signs. This rulemaking addresses comments received in response to the Office of Management and Budget's (OMB) request for regulatory reform nominations from the public. The OMB is required to submit an annual report to Congress on the costs and benefits of Federal regulations. The 2002 report included recommendations for regulatory reform that OMB requested from the public.[20] One recommendation was that the FHWA should establish standards for minimum levels of

[20] A copy of the OMB report ''Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulation and Unfunded Mandates on State, Local, and Tribal Entities'' is available at the following Web address: *http://www.whitehouse.gov/omb/inforeg/summaries_nominations_final.pdf.*

brightness of traffic signs.[21] The FHWA has identified this rulemaking as responsive to that recommendation.

It is anticipated that the economic impact of this rulemaking would cause minimal additional expense to public agencies. In 2003, the FHWA updated its analysis of the cost impacts to State and local agencies to reflect higher material costs due to inflation, an increase in the proportion of signs that would be replaced with higher-level sign sheeting material, and changes in the overall mileage of State and local roads. The findings of the 2003 analysis show that the costs of the proposed action to State and local agencies would be less than $100 million per year. The proposed seven-year regulation implementation period for ground mounted signs would allow State and local agencies to delay replacement of recently-placed Type I signs until they have reached their commonly-accepted seven-year service life. The proposed ten-year compliance period for overhead signs would allow an extended period of time due to the longer service life typically used for those signs.

The FHWA has considered the costs and benefits associated with this rulemaking and believes that the benefits outweigh the costs. Currently, the MUTCD requires that traffic signs be illuminated or retroreflective to enhance nighttime visibility. The changes proposed in this notice provide additional guidance, clarification, and flexibility in maintaining traffic sign retroreflectivity that is already required by the MUTCD. The proposed maintenance methods consider changes in the composition of the vehicle population, vehicle headlamp design, and the demographics of drivers. The FHWA expects that the proposed maintenance methods will help to promote safety and mobility on the nation's roads and will result in minimum additional expense to public agencies or the motoring public.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. The FHWA certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

[21] A complete compilation of comments received by OMB is available at the following Web address: *http://www.whitehouse.gov/omb/inforeg/key_comments.html*. Comment number 93 includes the recommendation concerning the retroreflectivity of traffic signs.

Executive Order 13132 (Federalism)

The FHWA analyzed this proposed amendment in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policy making discretion of the States and local governments. Nothing in the MUTCD directly preempts any State law or regulation.

The MUTCD is incorporated by reference in 23 CFR part 655, subpart F. These proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act

This notice of proposed amendments would not impose unfounded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). The findings of the impacts analysis indicate that this proposed action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year. In addition, sign replacement is eligible for up to 100 percent Federal-aid funding—this applies to local jurisdictions and tribal governments, pursuant to 23 U.S.C. 120(c).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed action does not contain a collection of information requirement for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this 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. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Authority: (23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); sec. 406(a), Pub. L. 102–388, 106 Stat. 1520, 1564; 23 CFR 1.32; and 49 CFR 1.48(b).)

Issued on: July 26, 2004.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 04–17409 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG–120616–03]

RIN 1545–BC08

Entry of Taxable Fuel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the tax on the entry of taxable fuel into the United States. The text of those regulations also serves as the text of these proposed regulations. The regulations affect enterers of taxable fuel, certain other importers, and certain sureties.

DATES: Written and electronic comments and requests for a public hearing must be received by October 28, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–120616–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–120616–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking portal at *http://www.regulations.gov* (IRS and REG–120616–03).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, LaNita VanDyke (202) 622–7180; concerning the regulations, Celia Gabrysh (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 28, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in § 48.4081–3T(c)(2)(iii) and (iv). Section 48.4081–3T(c)(2)(iii) generally provides that an importer of record may avoid tax liability if the importer of record obtains from the enterer a notification certificate, described in 48.4081–5, which contains the enterer's registration number. Section 48.4081–3T(c)(2)(iv) generally provides that a surety bond will not be charged for the tax imposed on the entry of the fuel covered by the bond, if at the time of entry, the surety has a notification certificate, described in 48.4081–5, which contains the enterer's registration number. These collections of information are required to obtain a tax benefit. The likely respondents are businesses.

Estimated total annual reporting and/or recordkeeping burden: 281 hours.

Estimated average annual burden hours per respondent and/or recordkeeper varies from .25 hour to 2.25 hours, depending on individual circumstances, with an estimated average of 1.25 hours.

Estimated number respondents and/or recordkeepers: 225.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Manufacturers and Retailers Excise Taxes Regulations (26 CFR part 48) relating to the tax on the entry of taxable fuel imposed by section 4081. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the time required to request and to furnish a notification certificate is minimal and will not have a significant impact on those small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this

notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS, the Treasury Department, and the Bureau of Customs and Border Protection, Department of Homeland Security, participated in their development.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 continues to read in part as follows:

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

Par. 2. In § 48.4081–1, paragraph (b), the definition of *Enterer* is revised to read as follows:

§ 48.4081–1 Taxable fuel; definitions.

(The text of the proposed amendment to § 48.4081–1(b) is the same as the text of § 48.4081–1T(b), definition of enterer, published elsewhere in this issue of the **Federal Register**.)

Par. 3. Section 48.4081–3 is amended by adding paragraphs (c)(2)(ii) through (c)(2)(iv) to read as follows:

§ 48.4081–3 Taxable fuel; taxable events other than removal at the terminal rack.

(The text of the proposed amendment to § 48.4081–3(c)(2)(ii) through (iv) is the same as the text of § 48.4081–3T(c)(2)(ii) through (iv) published elsewhere in this issue of the **Federal Register**.)

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–17450 Filed 7–29–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7792–7]

Ocean Dumping; Proposed Designation of Sites Offshore Palm Beach Harbor, FL and Offshore Port Everglades Harbor, FL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate two Ocean Dredged Material Disposal Sites (ODMDSs) in the Atlantic Ocean offshore Southeast Florida, as EPA-approved ocean dumping sites for the disposal of suitable dredged material. One site will be located offshore Palm Beach Harbor, Florida and the other offshore Port Everglades Harbor, Florida. This proposed action is necessary to provide acceptable ocean disposal sites for consideration as an option for dredged material disposal projects in the vicinity of Palm Beach Harbor and Port Everglades Harbor. These proposed site designations are for an indefinite period of time, but the sites will be subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATES: Comments must be received on or before September 13, 2004.

ADDRESSES: Submit your comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *mcarthur.christopher@epa.gov*
- Fax: (404) 562–9343
- Mail: Coastal Section, EPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303. Attn: Christopher McArthur.

The file supporting this proposed designation is available for public inspection at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Department of the Army, Jacksonville District Corps of Engineers, 701 San Marco Blvd., Jacksonville, FL 32207.

FOR FURTHER INFORMATION CONTACT: Christopher J. McArthur, Ocean Dumping Program Coordinator, U.S. Environmental Protection Agency, Region 4, Coastal Section, 61 Forsyth Street, SW, Atlanta, GA 30303, telephone: (404)562–9391, e-mail: *mcarthur.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. These proposed designations are being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. These site designations are being published as proposed rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. Regulated Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters offshore Port Everglades Harbor and Palm Beach Harbor, Florida, under the MPRSA and its implementing regulations. This proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the U.S. Army Corps of Engineers (COE) to transport dredged material for the purpose of disposal into ocean waters and (b) to the COE itself for its own dredged material disposal projects. Potentially regulated categories and

entities that may seek to use the proposed dredged material disposal sites may include:

Category	Examples of potentially regulated entities
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, U.S. Navy, and Other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action, should the proposed rule become a final rule. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with Section 103 of the MPRSA and the applicable regulations at 40 CFR parts 220 and 225, and whether you wish to use the sites subject to today's proposal. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare NEPA documents in connection with ocean disposal site designations. (*See* 63 FR 58045 [October 29, 1998], ''Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.'').

EPA, in cooperation with the COE, has prepared a Draft EIS (DEIS) entitled ''Draft Environmental Impact Statement for Designation of the Palm Beach Harbor Ocean Dredged Material Disposal Site and the Port Everglades Harbor Ocean Dredged Material Disposal Site.'' On March 26, 2004, the Notice of Availability (NOA) of the DEIS for public review and comment was published in the **Federal Register** (69 FR 15830 [March 26,2004]). Anyone desiring a copy of the DEIS may obtain one from the addresses given above. The public comment period on the DEIS closed on May 10, 2004.

EPA received 12 comment letters on the DEIS. There were six main concerns expressed in those letters: (1) There is an inadequate discussion of alternatives to ocean disposal; (2) the volume of material to be disposed and number of projects to use the sites is unclear; (3) the data on the benthic habitat within and near the proposed ODMDSs is inadequate; (4) updated information on cumulative impacts of activities in the area is needed; (5) potential adverse impacts to essential fish habitat and in particular the habitat of the blue-line tilefish have not been addressed; and (6) the potential of Florida Current spin-off eddies to transport disposed dredged material to important marine habitats has not been adequately addressed. No objections to the ODMDS locations were received and three letters of support for the need for the ODMDS were received. The concerns identified above will be addressed in the Final EIS.

The DEIS also contained a Biological Assessment, prepared pursuant to the requirements of Section 7 of the Endangered Species Act (ESA), 16 U.S.C. Section 1536, and the applicable implementing regulations. The Assessment set forth EPA's preliminary determination that the site designation of the Palm Beach Harbor ODMDS and Port Everglades Harbor ODMDS will not affect any threatened or endangered species under the purview of the National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service (FWS). EPA sought comments from NOAA Fisheries regarding the site designation and EPA's preliminary determination. In a May 24, 2004 letter, NOAA Fisheries concluded that adverse effects to whales are unlikely to occur from this project and that no effects to the shortnose sturgeon or smalltooth sawfish are likely to occur from the project.

In addition, the DEIS contained an assessment of the potential impacts on Essential Fish Habitat (EFH). Pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. Section 1855, EPA provided NOAA Fisheries a copy of the EFH Assessment thereby initiating official consultation. In a May 6, 2004 letter, NOAA Fisheries provided comments on the EFH Assessment and requested a revised EFH Assessment prior to providing EFH conservation recommendations. EPA will develop a revised EFH Assessment following NOAA Fisheries recommendations and include it as an appendix to the Final EIS.

Pursuant to an Office of Water policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designations for consistency with the State of Florida's (the State) approved coastal management program. EPA has determined that the designation of the proposed sites is consistent to the maximum extent practicable with the State coastal management program, and submitted this determination to the State for review in accordance with EPA policy. In addition, as part of the NEPA process, EPA has consulted with the State regarding the effects of the dumping at the proposed sites on the State's coastal zone. EPA will take the State's comments into account in preparing the final EIS for the sites, in determining whether the proposed sites should be designated, and in determining whether restrictions or limitations should be placed on the use of the sites, if they are designated.

In a letter dated June 7, 2004, the Florida Department of State agreed that it is unlikely that the proposed designations will affect any archaeological or historic resources listed, or eligible for listing, in the *National Register of Historic Places*, or otherwise of significance in accordance with the National Preservation Act of 1966 (Public Law 89–6654), as amended.

The proposed action discussed in the DEIS is the permanent designation for continuing use of ocean disposal sites offshore Palm Beach Harbor and Port Everglades Harbor, Florida. The purpose of the proposed action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the permanent designation

of the ODMDSs is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the Palm Beach Harbor and Port Everglades Harbor area. The need for ocean disposal for these and other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for its own actions. This will include an evaluation of disposal alternatives.

For the proposed ODMDSs, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria set forth in the Ocean Dumping Regulations (40 CFR 220–229) and the COE regulations (33 CFR 209.120 and 335–338). The COE issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits to applicants for the transport of dredged material intended for disposal after compliance with regulations is determined. EPA has the right to disapprove any ocean disposal project if, in its judgment, all provisions of MPRSA and the associated implementing regulations have not been met.

The DEIS discusses the need for these site designations and examines ocean disposal site alternatives to the proposed actions. Non-ocean disposal options have also been examined in the Disposal Area Studies for Palm Beach Harbor and Port Everglades Harbor, prepared by the COE and included as appendices to the DEIS. Alternatives to ocean disposal may include upland disposal within the port areas, or utilization of dredged material for beneficial use such as beach re-nourishment. The studies concluded that upland disposal in the intensively developed port areas is not feasible. Undeveloped areas within cost-effective haul distances are environmentally valuable in their own right. Beach placement is limited to predominately sandy material.

The following ocean disposal alternatives were evaluated in the DEIS:

1. Alternative Sites on the Continental Shelf

In the Palm Beach Harbor and Port Everglades Harbor nearshore area, hardgrounds supporting coral and algal communities are concentrated on the continental shelf. Disposal operations on the shelf could adversely impact this reef habitat. Because the shelf is narrow, the transport of dredged materials for disposal beyond the shelf is both practical and economically feasible. Therefore, alternative sites on the continental shelf are not desirable.

2. Designated Interim Sites

Two interim sites were designated for Palm Beach Harbor, one of which is located nearshore at the port entrance and the other is located approximately 2.9 nmi (4.5 km) offshore. Following discussions with the State of Florida, a zone of siting feasibility was established, eliminating from consideration any areas within 3 nautical miles of shore to avoid direct impact to natural reefs in the area. As a result, both Palm Beach Harbor interim sites were not considered further.

The interim site for Port Everglades is located 1.7 nmi (3.2 km) offshore. A 1984 survey conducted by the EPA indicated that some damage to nearby inshore, hard bottom areas may have occurred due to the movement of fine grained material associated with disposed dredged material. In light of the survey findings, disposal at the Port Everglades interim site was discontinued and the site was eliminated from further consideration.

3. Alternative Sites Beyond the Continental Shelf

Alternative sites beyond the continental shelf considered for Palm Beach Harbor include the 3 mile site, the 4.5 mile site and the 9 mile site. The 4.5 mile site is approximately one square mile in size and is located within the eastern portion of the 3 mile site. The 3 mile site is four square miles in size. The 3 mile site was dropped from further consideration in favor of the 4.5 mile site as it was determined that a site four square miles in size was not necessary at the depths at this location. The 9 mile site is 4 square miles in size. The deeper depths at the 9 mile site result in a larger disposal footprint, due to greater dispersion, necessitating a larger 4 square mile disposal site. Both the 4.5 mile site and the 9 mile site were considered in the DEIS.

Alternative sites beyond the continental shelf considered for the Port Everglades Harbor include the 4 mile site and the 7 mile site. The 4 mile site is approximately one square mile in size whereas the 7 mile site is two square miles in size. The deeper depths at the 7 mile site result in a larger disposal footprint necessitating a larger 4 square mile disposal site. Both the 4 mile site and the 7 mile site were considered in the DEIS.

4. No Action

The No-Action Alternative would not provide acceptable EPA-designated ocean disposal sites for use by the COE or other entities for the disposal of dredged material. Without final-designated disposal sites, the maintenance of the existing Federal Navigation Projects at Palm Beach Harbor and Port Everglades Harbor would be adversely impacted with subsequent effects upon the local and regional economies. Interim designated ODMDSs are not available. Alternative dredged material disposal methods would be required or the dredging and dredged material disposal discontinued. In the absence of an EPA designated ocean dredged material disposal site, the COE could select an alternative pursuant to Section 103 of MPRSA. In such cases, the ocean site selected for disposal would be evaluated according to the criteria specified in Section 102(a) of MPRSA and EPA's Ocean Dumping Regulation and Criteria 40 CFR part 228, and EPA concurrence is required. A site so selected can be used for five years without EPA designation, and can continue to be used for another five years under limited conditions. Accordingly, the No-Action alternative would not provide a long-term management option for dredged material disposal.

5. Preferred Alternative

The preferred site near Palm Beach Harbor proposed for ODMDS designation is an area approximately 1 square nautical mile (nmi ^{2}) located east northeast of the Lake Worth Inlet and approximately 4.5 nmi offshore. The preferred site at Port Everglades Harbor proposed for ODMDS designation is an area approximately 1 nmi ^{2} located east northeast of Port Everglades and approximately 4 nmi offshore. These sites were found to comply with the criteria for evaluation of ocean disposal sites established in 40 CFR Sections 228.5 and 228.6 of EPA's Ocean Dumping Regulations. No significant impacts to critical resource areas are expected to result from designation of either of these sites. Similar types of impacts are expected from these sites as those located further offshore. However, these sites are expected to result in less areal impact as a result of their shallower depth. The preferred sites would require significantly less consumption of resources and would result in significantly less air emissions than the offshore sites. In addition, monitoring of the preferred sites would be less costly to the federal government and less difficult than the offshore sites.

Therefore, these sites were selected as the preferred alternatives.

The DEIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on a series of disposal site environmental studies. The environmental studies and final designation are being conducted in accordance with the requirements of MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

D. Proposed Site Designations

The proposed site for Palm Beach Harbor is located east of Palm Beach, Florida, the western boundary being 4.3 nmi offshore. The proposed ODMDS occupies an area of about 1 nmi^2, in the configuration of an approximate 1 nmi by 1 nmi square. Water depths within the area range from 525 to 625 feet. The coordinates of the Palm Beach Harbor ODMDS proposed for final designation are as follows:

26°47′30″ N.	79°57′09″ W.;
26°47′30″ N.	79°56′02″ W.;
26°46′30″ N.	79°57′09″ W.; and
26°46′30″ N.	79°56′02″ W.

Center coordinates are 26°47′00″ N. and 79°56′35″ W.

The proposed site for Port Everglades Harbor is located east of Fort Lauderdale, Florida, the western boundary being 3.8 nmi offshore. The proposed ODMDS occupies an area of about 1 nmi^2, in the configuration of an approximate 1 nmi by 1 nmi square. Water depths within the area range from 640 to 705 feet. The coordinates of the Port Everglades Harbor ODMDS proposed for final designation are as follows:

26°07′30″ N.	80°02′00″ W.;
26°07′30″ N.	80°01′00″ W.;
26°06′30″ N.	80°02′00″ W.; and
26°06′30″ N.	80°01′00″ W.

Center coordinates are 26°07′00″ N. and 80°01′30″ W. All coordinates utilize the North American Datum of 1983 (NAD83).

E. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The proposed sites conform to the five general criteria.

In addition to these general criteria in §§ 228.5 and 228.6 lists the eleven specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these eleven criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed sites are reviewed below in terms of these eleven criteria (the DEIS may be consulted for additional information).

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The boundary, center coordinates, water depth and distance from coast of the proposed sites are given above.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The most active breeding and nursery areas are located in inshore waters, along adjacent beaches, or in nearshore reef areas. While breeding, spawning, and feeding activities may take place near the proposed ODMDSs, these activities are not believed to be confined to, or concentrated in, these areas. While many marine species may pass through the proposed ODMDSs, passage is not geographically restricted to these areas.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The proposed disposal sites for Palm Beach Harbor and Port Everglades are located approximately 4.5 nmi and 4.0 nmi offshore, respectively. The nearest beaches are located on the shorelines west of the sites. Because of the distance of the proposed sites from the shoreline and the expected localized effects at the disposal sites, it is unlikely that dredged material disposal at either of the proposed sites would adversely affect coastal beaches. Amenity areas in the vicinity of the proposed sites include artificial and natural reefs. The proposed disposal sites for Palm Beach Harbor and Port Everglades are located approximately 2.6 nmi and 3.0 nmi from the outer reef, respectively. Both proposed sites are located at least 2.3 nmi from the nearest artificial reef. Currents in the vicinity trend alongshore in a general north-south orientation. Modeling performed by the COE indicates that disposed material will not impact these natural areas.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228(a)(4))

The only material to be placed at the proposed ODMDSs will be dredged material that meets the EPA Ocean Dumping Criteria in 40 CFR parts 220 through 229. No beach quality material is proposed to be transported to the proposed ODMDSs. The proposed sites are expected to be used for routine maintenance of the respective Harbor Projects. Annual average disposal volumes of 50,000 cubic yards of material are expected at each site. Dredged material from Port Everglades Harbor is expected to have a solids content of 60 to 70 percent solids by weight with a grain size of 38 to 5 percent of the grains finer than sand by weight. Dredged material from Palm Beach Harbor is expected to have solids content of 80 to 85 percent solids by weight with a grain size of 6 percent finer than sand. It has been demonstrated by the COE that the most cost effective method of dredging is clamshell/barge dredging for Palm Beach Harbor and hopper dredging for Port Everglades Harbor. Additional foreseen use of the Port Everglades Harbor site could be the Federal Port Everglades Deepening Project or use by the U.S. Navy in Port Everglades. The Deepening Project has not yet been authorized and the Navy project has not yet been permitted. The disposal of dredge material at the proposed sites will be conducted using a near instantaneous dumping type barge or scow.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Surveillance and monitoring of the proposed sites is feasible. Survey vessels, aircraft overflights, or automated Geographic Positioning Systems (GPS) surveillance systems are feasible surveillance methods. The depths at these sites make conventional ODMDS monitoring techniques difficult to utilize. A draft Site Management and Monitoring Plan (SMMP) for each ODMDS has been developed and was included in an appendix in the DEIS. The SMMPs establish a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMPs may be modified for cause by EPA.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

Prevailing currents parallel the coast and are generally oriented along a north-south axis. Northerly flow predominates. Mean surface currents range from 10 to 100 cm/sec depending on direction with maximum velocities up to 530 cm/sec. Current speeds are lower and current reversals more common in near-bottom waters. Mean velocities of 20 cm/sec and maximum velocities of 130 cm/sec have been measured for near-bottom waters in the area. Dredged material dispersion studies conducted by the COE for both short (hours) and long-term (months) transport of material disposed at the proposed Palm Beach Harbor and Port Everglades Harbor sites indicate little possibility of disposed material affecting near-shore reefs in the areas of the disposal sites.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

There are no current or previous discharges within the proposed ODMDSs. There are two formerly designated interim-designated ODMDSs near Palm Beach Harbor. Use of these sites was discontinued by the implementation of the Water Resources Development Act of 1992. The disposal of 5.2 million cubic yards of dredged material from Palm Beach Harbor occurred between 1950 and 1983 in the interim sites. The characteristics of the dredged material were poorly graded sand with traces of shell fragments. The existing EPA interim-designated ODMDS at Port Everglades Harbor is located approximately 2.5 nmi west-southwest of the proposed site. The disposal of 220,000 cubic yards of dredged material occurred in this site between 1952 and 1982. The characteristics of the disposed dredged material were organic silt with some clay. A 1984 survey conducted by EPA indicated that some damage to nearby inshore, hard bottom areas may have occurred because of the movement of fine material associated with the disposal of dredged material at the site. In light of the survey findings, disposal at the Port Everglades interim site was discontinued.

There are two wastewater ocean outfall discharges in the vicinity of each proposed ODMDS. The nearest outfall to either of the proposed sites is 11 miles. The effluent from wastewater outfalls has undergone secondary treatment and chlorination. Significant adverse impacts to the marine environment have not been documented in association with either of these offshore wastewater outfalls. Any effects from these discharges would be local and predominately in a north-south direction due to prevailing currents. Therefore, these discharges should not have any effect within the proposed sites.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The infrequent use of the proposed sites should not significantly disrupt either commercial shipping or recreational boating. Commercial and recreational fishing activities are concentrated in inshore and nearshore waters. No mineral extraction, desalination, or mariculture activities occur in the immediate area. Scientific resources present near the Port Everglades Harbor site include the South Florida Ocean Measurement Center (SFOMC, formerly the South Florida Testing Facility). The SFOMC is located 1.5 nmi south of the proposed site. Interference with activities at the SFOMC is not expected.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Baseline surveys conducted for the Palm Beach Harbor and the Port Everglades Harbor ODMDSs show the water quality and other environmental characteristics of the proposed ODMDSs to be typical of the Atlantic Ocean. Salinity, dissolved oxygen, and transmissivity (water clarity) data indicated water masses over the sites were similar to water masses in open ocean waters and deviated little between sites. Macroinfaunal samples were dominated in numbers by annelids and arthropods. Water quality at the proposed ODMDSs is variable and is influenced by frequent Florida Current intrusions of offshore oceanic waters, and periodic upwelling of deep ocean waters. The proposed disposal sites lie on the continental slope in an area traversed by the western edge of the Florida Current. The location of the western edge of the current determines to a large extent whether waters at the site are predominantly coastal or oceanic. Frequent intrusions or eddies of the Florida Current transport oceanic waters over the continental shelf in the vicinity of the proposed ODMDSs. Periodic upwelling/downwelling events associated with wind stress also influence waters in the area.

No critical habitat or unique ecological communities have been identified within or adjacent to the proposed sites.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity of either proposed sites.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

Due to the proximity of proposed sites to entrance channels, the cultural resource that has the greatest potential for impact would be shipwrecks. Sidescan sonar surveys of the proposed sites were conducted which should have identified any potential shipwrecks. No such features were noted in sidescan sonar or video surveys of the proposed disposal sites. No natural or cultural features of historical importance have been identified at either site proposed for designation in this rule. The Florida Department of State Division of Historical Resources was consulted and they determined that it is unlikely that designation of the ODMDSs would affect archaeological or historical resources eligible for listing in the *National Register of Historic Places*, or otherwise of significance.

F. Site Management

Site management of the proposed ODMDSs is the responsibility of EPA in cooperation with the COE. The COE issues permits to private applicants for ocean disposal; however, EPA Region 4 assumes overall responsibility for site management. Development of Site Management Plans is required by the MPRSA prior to final designation. Draft Site Management and Monitoring Plans (SMMPs) for the proposed ODMDS were developed as a part of the process of completing the DEIS. The plans provide procedures for both site management and for the monitoring of effects of disposal activities. The SMMPs are intended to be flexible and may be modified by the EPA for cause.

G. Proposed Action

The DEIS concludes that the proposed sites may appropriately be designated

for use. The proposed sites are consistent with the 11 specific and 5 general criteria used for site evaluation.

The designation of the Palm Beach Harbor and Port Everglades Harbor sites as EPA-approved ODMDSs is being published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria (40 CFR part 227) and authorize disposal. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

H. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(A) 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;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this proposed action does not meet the definition of a ''significant regulatory action'' under E.O. 12866 as described above and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

3. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant adverse economic impact on small entities because the proposed ocean disposal site designation does not regulate small entities. The site designations will only have the effect of providing a long term, environmentally acceptable disposal option for dredged material. This action will help to facilitate the maintenance of safe navigation on a continuing basis.

4. The Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, the requirements of section 202 and section 205 of the UMRA do not apply to this proposed rule. Similarly, EPA has also determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this proposed rule.

5. 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'' 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.''

This proposed 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 proposed rule addresses the designation of two

ocean disposal sites for the potential disposal of dredged materials. This proposed action neither creates new obligations nor alters existing authorizations of any State, local or governmental entities. Thus, Executive Order 13132 does not apply to this rule. However, EPA did consult with State and local government representatives in the development of the DEIS and through solicitation of comments on the DEIS. In addition, and consistent with Executive Order 13132 and EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

6. 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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

The proposed action does not have Tribal implications. If finalized, the proposed action would 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 proposed rule designates ocean dredged material disposal sites and does not establish any regulatory policy with tribal implications. EPA specifically solicits additional comment on this proposed rule from tribal officials. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and 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 proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

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

This proposed 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.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer 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 doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus 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 proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

List of Subjects in 40 CFR Part 228

Environmental Protection, Water Pollution Control.

Dated: July 12, 2004.

J.I. Palmer, Jr.,

Regional Administrator for Region 4.

In consideration of the foregoing, Subchapter H of chapter I of title 40 is proposed to be amended as set forth below:

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.14 is amended by removing and reserving paragraphs (h)(3), (h)(4), and (h)(5).

3. Section 228.15 is amended by adding paragraphs (h)(21) and (h)(22) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(21) Palm Beach Harbor, FL Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 26°47′30″N., 79°57′09″W.; 26°47′30″N., 79°56′02″W.; 26°46′30″N., 79°57′09″W.; 26°46′30″N., 79°56′02″W. Center coordinates are 26°47′00″N and 79°56′35″W.

(ii) Size: Approximately 1 square nautical mile.

(iii) Depth: Ranges from 525 to 625 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(22) Port Everglades Harbor, FL Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 26°07′30″N., 80°02′00″W.; 26°07′30″N., 80°01′00″W.; 26°06′30″N., 80°02′00″W.; 26°06′30″N., 80°01′00″W. Center coordinates are 26°07′00″N and 80°01′30″W.

(ii) Size: Approximately 1 square nautical mile.

(iii) Depth: Ranges from 640 to 705 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 04–17375 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7793–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed notice of intent to delete the South 8th Street Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a notice of intent to delete the South 8th Street Landfill Superfund Site (Site) located in West Memphis, Crittenden County, Arkansas, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Arkansas, through the Arkansas Department of Environmental Quality, have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund. In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of deletion of the South 8th Street Landfill Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by August 30, 2004.

ADDRESSES: Written comments should be addressed to: Vincent Malott, Remedial Project Manager, U.S. EPA Region 6 (6SF–AP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8313 or 1–800–533–3508 (*malott.vincent@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Vincent Malott, Remedial Project Manager, EPA Region 6 (6SF–AP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8313 or 1–800–533–3508 (*malott.vincent@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: EPA Region 6, Seventh Floor Reception Area, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, Appointments: (214) 665–6548, Monday–Friday—7:30 a.m. to 4:30 p.m.; West Memphis Public Library, 213 North Avalon, West Memphis, AR 72301, (870) 732–7590, Monday 10 a.m.–8 p.m., Tuesday–Thursday 10 a.m.–7 p.m., Friday 10 a.m.–5 p.m., Saturday 10 a.m.–3 p.m., closed on Sunday; Arkansas Department of Environmental Quality, attention: Masoud Arjmandi, 8001 National Drive, Little Rock, Arkansas 72219, (501) 682–0852, Monday–Friday, excluding holidays, 8 a.m. to 4:30 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 20, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 04–17300 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7792–9]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Ralph Gray Trucking Company Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX is issuing a notice of intent to delete Ralph Gray Trucking Company Superfund Site (Site) located in Westminster, California, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of California, through the California Department of Toxic Substances Control (DTSC), have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under CERCLA.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of deletion of Ralph Gray Trucking Company Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct

final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by August 30, 2004.

ADDRESSES: Written comments should be addressed to: Don Hodge, Community Involvement Coordinator, U.S. EPA Region IX (SFD–3), 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3240 or 1–800–231–3075.

FOR FURTHER INFORMATION CONTACT: Patricia Bowlin, Remedial Project Manager, U.S. EPA Region IX (SFD–7–3), 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3177 or 1–800–231–3075.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, San Francisco, CA 94105–3901, (415) 536–2000, Monday through Friday 8 a.m. to 5 p.m.; Westminster Public Library, 8180 13th Street, Westminster, CA 92683, (714) 893–5057.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 21, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–17298 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1265–CN]

RIN 0938–AM93

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2005; Correction Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects technical errors that appeared in the proposed rule published in the **Federal Register** on June 2, 2004 entitled ''Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2005.''

FOR FURTHER INFORMATION CONTACT: Randy Throndset, (410) 786–0131.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 04–12314 of June 2, 2004 (69 FR 31248), we inadvertently published the 2004 pre-floor and pre-reclassified wage index tables instead of the intended 2005 pre-floor and pre-reclassified wage index tables.

The technical errors are identified and corrected in the Correction of Errors section below.

II. Correction of Errors

In FR Doc. 04–12314 of June 2, 2004 (69 FR 31248), replace the erroneous tables for Addenda A, B, and C on pages 31262–31275 with the following:

ADDENDUM A.—PROPOSED WAGE INDEX FOR RURAL AREAS—APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX (CY 2005)

MSA name	Wage index
ALABAMA	0.7637
ALASKA	1.1637
ARIZONA	0.9140
ARKANSAS	0.7704
CALIFORNIA	1.0297
COLORADO	0.9368
CONNECTICUT	1.1586
DELAWARE	0.9504
FLORIDA	0.8789
GEORGIA	0.8247
GUAM	0.9611
HAWAII	1.0522
IDAHO	0.8826
ILLINOIS	0.8341
INDIANA	0.8736
IOWA	0.8550
KANSAS	0.8088
KENTUCKY	0.7844
LOUISIANA	0.7291
MAINE	0.9039
MARYLAND	0.9179
MASSACHUSETTS	1.0217
MICHIGAN	0.8741
MINNESOTA	0.9339
MISSISSIPPI	0.7583
MISSOURI	0.7829
MONTANA	0.8701
NEBRASKA	0.9035
NEVADA	0.9833
NEW HAMPSHIRE	0.9940
NEW JERSEY [1]	.....
NEW MEXICO	0.8529
NEW YORK	0.8403
NORTH CAROLINA	0.8501
NORTH DAKOTA	0.7743
OHIO	0.8760
OKLAHOMA	0.7537
OREGON	1.0050
PENNSYLVANIA	0.8348
PUERTO RICO	0.4047
RHODE ISLAND [1]	.....
SOUTH CAROLINA	0.8640
SOUTH DAKOTA	0.8393
TENNESSEE	0.7876
TEXAS	0.7910
UTAH	0.8843
VERMONT	0.9375
VIRGINIA	0.8480
VIRGIN ISLANDS	0.7457
WASHINGTON	1.0072
WEST VIRGINIA	0.8084
WISCONSIN	0.9498
WYOMING	0.9182

[1] All counties within State are classified as Urban

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

MSA	Urban area (constituent counties)	Wage index
0040	Abilene, TX	0.8009
	Taylor, TX	
0060	Aguadilla, PR	0.4294
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	0.9055
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.1266
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY	0.8570
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	1.0485
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.8171
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA	0.9536
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.8462
	Blair, PA	
0320	Amarillo, TX, Potter, TX	0.9178
	Randall, TX	
0380	Anchorage, AK	1.2109
	Anchorage, AK	
0440	Ann Arbor, MI	1.0817
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.7881
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI	0.9115
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.3757
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.9502
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	1.0203
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	0.9971
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ	1.0907
	Atlantic, NJ	
	Cape May, NJ	
0580	Auburn-Opelka, AL	0.8215
	Lee, AL	
0600	Augusta-Aiken, GA-SC	0.9208
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.9596
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	1.0036
	Kern, CA	
0720	Baltimore, MD	0.9908
	Anne Arundel, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Annes, MD	
0733	Bangor, ME	0.9955
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA	1.2335
	Barnstable, MA	
0760	Baton Rouge, LA	0.8354
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX	0.8616
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.1643
	Whatcom, WA	
0870	Benton Harbor, MI	0.8847
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.1967
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	0.8961
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS	0.8649
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.8447
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.9199
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.7505
	Burleigh, ND	
	Morton, ND	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
1020	Bloomington, IN	0.8588
	Monroe, IN	
1040	Bloomington-Normal, IL	0.9111
	McLean, IL	
1080	Boise City, ID	0.9352
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1291
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	1.0046
	Boulder, CO	
1145	Brazoria, TX	0.8525
	Brazoria, TX	
1150	Bremerton, WA	1.0614
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX	1.0125
	Cameron, TX	
1260	Bryan-College Station, TX	0.9219
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY	0.9339
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	0.9322
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.4061
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH	0.8895
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.9244
	Natrona, WY	
1360	Cedar Rapids, IA	0.8975
	Linn, IA	
1400	Champaign-Urbana, IL	0.9527
	Champaign, IL	
1440	Charleston-North Charleston, SC	0.9420
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.8876
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC-SC	0.9712
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanley, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0295
	Albemarle, VA	
	Charlottesville City, VA	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN-GA	0.9207
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8980
	Laramie, WY	
1600	Chicago, IL	1.0852
	Cook, IL	
	DeKalb, IL	
	DuPage, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	1.0543
	Butte, CA	
1640	Cincinnati, OH-KY-IN	0.9595
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN-KY	0.8022
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH	0.9626
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO	0.9793
	El Paso, CO	
1740	Columbia, MO	0.8396
	Boone, MO	
1760	Columbia, SC	0.9450
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA-AL	0.8690
	Russell, AL	
	Chattahoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840	Columbus, OH	0.9753
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.8647
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, OR	1.0545
	Benton, OR	
1900	Cumberland, MD-WV	0.8662

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	1.0049
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.8643
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA-IL	0.8774
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	0.9232
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.8900
	Flagler, FL	
	Volusia, FL	
2030	Dacatur, AL	0.8894
	Lawrence, AL	
	Morgan, AL	
2040	Dacatur, IL	0.8122
	Macon, IL	
2080	Denver, CO	1.0905
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.9267
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.0227
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.7597
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9825
	Kent, DE	
2200	Dubuque, IA	0.8748
	Dubuque, IA	
2240	Duluth-Superior, MN-WI	1.0356
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.1658
	Dutchess, NY	
2290	Eau Claire, WI	0.9139
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.9065
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9279
	Elkhart, IN	
2335	Elmira, NY	0.8445
	Chemung, NY	
2340	Enid, OK	0.9001

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Garfield, OK	
2360	Erie, PA	0.8699
	Erie, PA	
2400	Eugene-Springfield, OR	1.0940
	Lane, OR	
2440	Evansville-Henderson, IN-KY	0.8395
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND-MN	0.9115
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.9363
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR	0.8637
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ-UT	1.0611
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1178
	Genesee, MI	
2650	Florence, AL	0.7883
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.8961
	Florence, SC	
2670	Fort Collins-Loveland, CO	1.0219
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0165
	Broward, FL	
2700	Fort Myers-Cape Coral, FL	0.9372
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL	1.0046
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR-OK	0.8303
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL	0.8786
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9737
	Adams, IN	
	Allen, IN	
	De Kalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX	0.9538
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0408
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.8049
	Etowah, AL	
2900	Gainesville, FL	0.9459
	Alachua, FL	
2920	Galveston-Texas City, TX	0.9403
	Galveston, TX	
2960	Gary, IN	0.9343
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.8467
	Warren, NY	
	Washington, NY	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
2980	Goldsboro, NC	0.8779
	Wayne, NC	
2985	Grand Forks, ND-MN	0.9092
	Polk, MN	
	Grand Forks, ND	
2995	Grand Junction, CO	0.9900
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI	0.9520
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	0.8810
	Cascade, MT	
3060	Greeley, CO	0.9444
	Weld, CO	
3080	Green Bay, WI	0.9586
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC	0.9312
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadin, NC	
3150	Greenville, NC	0.9183
	Pitt, NC	
3160	Greenville, Spartanburg-Anderson, SC	0.9400
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	0.9940
	Washington, MD	
3200	Hamilton-Middletown, OH	0.9066
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA	0.9286
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.1068
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.7362
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC	0.9502
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawaba, NC	
3320	Honolulu, HI	1.1014
	Honolulu, HI	
3350	Houma, LA	0.7721
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	1.0117
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
3400	Huntington-Ashland, WV-KY-OH	0.9565
	Boyd, KY	
	Carter, KY	
	Grenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.8851
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	1.0039
	Boone, IN	
	Hamilton, IN	
	Hancoock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	0.9655
	Johnson, IA	
3520	Jackson, MI	0.9146
	Jackson, MI	
3560	Jackson, MS	0.8406
	Hinds, MS	
	Madison, MS	
	Rankin MS	
3580	Jackson, TN	0.8900
	Madison, TN	
	Chester, TN	
3600	Jacksonville, FL	0.9548
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.8402
	Onslow, NC	
3610	Jamestown, NY	0.7589
	Chautauqua, NY	
3620	Janesville-Beloit, WI	0.9583
	Rock, WI	
3640	Jersey City, NJ	1.0923
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN-VA	0.8203
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.7981
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.7934
	Craighead, AR	
3710	Joplin, MO	0.8721
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI	1.0350
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	1.0603
	Kankakee, IL	
3760	Kansas City, KS-MO	0.9642
	Johnson, KS	
	Leavenworth, KS	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	0.9772
	Kenosha, WI	
3810	Killeen-Temple, TX	0.9242
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.8509
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	0.8986
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI-MN	0.9290
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.8105
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.9068
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.7959
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL	0.8931
	Polk, FL	
4000	Lancaster, PA	0.9883
	Lancaster, PA	
4040	Lansing-East Lansing, MI	0.9659
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.8747
	Webb, TX	
4100	Las Cruces, NM	0.8784
	Dona Ana, NM	
4120	Las Vegas, NV-AZ	1.1121
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150	Lawrence, KS	0.8644
	Douglas, KS	
4200	Lawton, OK	0.8212
	Comanche, OK	
4243	Lewiston-Auburn, ME	0.9562
	Androscoggin, ME	
4280	Lexington, KY	0.8053
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	0.9258
	Allen, OH	
	Auglaize, OH	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
4360	Lincoln, NE	1.0208
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR	0.8827
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	0.8739
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA	1.1732
	Los Angeles, CA	
4520	Louisville, KY-IN	0.9163
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.8777
	Lubbock, TX	
4640	Lynchburg, VA	0.9018
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.9596
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	1.0395
	Dane, WI	
4800	Mansfield, OH	0.9105
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	0.4769
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX	0.8602
	Hidalgo, TX	
4890	Medford-Ashland, OR	1.0534
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL	0.9633
	Brevard, FL	
4920	Memphis, TN-AR-MS	0.9234
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	1.0576
	Merced, CA	
5000	Miami, FL	1.0026
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ	1.1360
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI	1.0076
	Milwaukee, WI	
	Ozaukee, WI	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN-WI	1.1067
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9618
	Missoula, MT	
5160	Mobile, AL	0.7933
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.1966
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.0889
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.7913
	Ouachita, LA	
5240	Montgomery, AL	0.8300
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	0.8580
	Delaware, IN	
5330	Myrtle Beach, SC	0.9022
	Horry, SC	
5345	Naples, FL	1.0596
	Collier, FL	
5360	Nashville, TN	1.0108
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.2921
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2254
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT	1.1596
	New London, CT	
5560	New Orleans, LA	0.9103
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.3588
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.1625
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660	Newburgh, NY-PA	1.1171
	Orange, NY	
	Pike, PA	
.		
	Wage	
	MSA Urban area (constituent counties) index	
5720	Norfolk-Virginia Beach-Newport News, VA-NC	0.8895
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.5221
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	0.9153
	Marion, FL	
5800	Odessa-Midland, TX	0.9632
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK	0.8966
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.1007
	Thurston, WA	
5920	Omaha, NE-IA	0.9754
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945	Orange County, CA	1.1612
	Orange, CA	
5960	Orlando, FL	0.9742
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.8434
	Daviess, KY	
6015	Panama City, FL	0.8124
	Bay, FL	
6020	Parkersburg-Marietta, WV-OH	0.8288
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8306
	Escambia, FL	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.8886
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA-NJ	1.0824
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Mongtomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	0.9982
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.8673
	Jefferson, AR	
6280	Pittsburgh, PA	0.8756
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0439
	Berkshire, MA	
6340	Pocatello, ID	0.9602
	Bannock, ID	
6360	Ponce, PR	0.4954
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	1.0112
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR-WA	1.1403
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI	1.1062
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	0.9613
	Utah, UT	
6560	Pueblo, CO	0.8752
	Pueblo, CO	
6580	Punta Gorda, FL	0.9441
	Charlotte, FL	
6600	Racine, WI	0.9045
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC	1.0258
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
6660	Rapid City, SD	0.8912
	Pennington, SD	
6680	Reading, PA	0.9216
	Berks, PA	
6690	Redding, CA	1.1835
	Shasta, CA	
6720	Reno, NV	1.0456
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA	1.0520
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA	0.9398
	Charles City County, VA	
	Chesterfield, VA	
	Colonia Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA	1.0975
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	0.8429
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.1504
	Olmsted, MN	
6840	Rochester, NY	0.9196
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.9626
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.8998
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.1849
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI	0.9696
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	1.0215
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	1.0013
	Andrew, MO	
	Buchanan, MO	
7040	St. Louis, MO-IL	0.9081
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
7080	Salem, OR	1.0557
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.3823
	Monterey, CA	
7160	Salt Lake City-Ogden, UT	0.9487
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.8168
	Tom Green, TX	
7240	San Antonio, TX	0.9023
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.1267
	San Diego, CA	
7360	San Francisco, CA	1.4712
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.4744
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.4802
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso	1.1118
	Robles, CA	
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.0771
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA	1.4780
	Santa Cruz, CA	
7490	Santa Fe, NM	1.0590
	Los Alamos, NM	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Santa Fe, NM	
7500	Santa Rosa, CA	1.2962
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	0.9630
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	0.9460
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton-Wilkes-Barre-Hazleton, PA	0.8523
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA	1.1479
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.7881
	Mercer, PA	
7620	Sheboygan, WI	0.8949
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.9617
	Grayson, TX	
7680	Shreveport-Bossier City, LA	0.9112
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA-NE	0.9094
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.9441
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	0.9447
	St. Joseph, IN	
7840	Spokane, WA	1.0661
	Spokane, WA	
7880	Springfield, IL	0.8738
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.8597
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.0174
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	0.8462
	Centre, PA	
8080	Steubenville-Weirton, OH-WV	0.8281
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.0564
	San Joaquin, CA	
8140	Sumter, SC	0.8520
	Sumter, SC	
8160	Syracuse, NY	0.9394
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.1078
	Pierce, WA	
8240	Tallahassee, FL	0.8656
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL	0.9024

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.8582
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX	0.8414
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	0.9525
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.8904
	Shawnee, KS	
8480	Trenton, NJ	1.0276
	Mercer, NJ	
8520	Tucson, AZ	0.8926
	Pima, AZ	
8560	Tulsa, OK	0.8729
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.8440
	Tuscaloosa, AL	
8640	Tyler, TX	0.9502
	Smith, TX	
8680	Utica-Rome, NY	0.8295
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA	1.3517
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1105
	Ventura, CA	
8750	Victoria, TX	0.8469
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ	1.0573
	Cumberland, NJ	
8780	Visalia-Tulare-Porterville, CA	0.9964
	Tulare, CA	
8800	Waco, TX	0.8146
	McLennan, TX	
8840	Washington, DC-MD-VA-WV	1.0971
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA	0.8633
	Black Hawk, IA	
8940	Wausau, WI	0.9570
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL	1.0059
	Palm Beach, FL	
9000	Wheeling, WV-OH	0.7449
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	0.9473
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.8395
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	0.8486
	Lycoming, PA	
9160	Wilmington-Newark, DE-MD	1.1121
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	0.9237
	New Hanover, NC	
	Brunswick, NC	
9260	Yakima, WA	1.0323
	Yakima, WA	
9270	Yolo, CA	0.9378
	Yolo, CA	
9280	York, PA	0.9150
	York, PA	
9320	Youngstown-Warren, OH	0.9518
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.0364
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	0.8871
	Yuma, AZ	

ADDENDUM C.—COMPARISON OF PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR FY 2003 AND PROPOSED CY 2005

Rural area	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003-proposed CY 2005
ALABAMA	0.7660	0.7637	-0.30
ALASKA	1.2293	1.1637	-5.34
ARIZONA	0.8493	0.9140	7.62
ARKANSAS	0.7666	0.7704	0.50
CALIFORNIA	0.9840	1.0297	4.64
COLORADO	0.9015	0.9368	3.92
CONNECTICUT	1.2394	1.1586	-6.52
DELAWARE	0.9128	0.9504	4.12
FLORIDA	0.8814	0.8789	-0.28
GEORGIA	0.8230	0.8247	0.21
GUAM	0.9611	0.9611	0.00
HAWAII	1.0255	1.0522	2.60
IDAHO	0.8747	0.8826	0.90
ILLINOIS	0.8204	0.8341	1.67
INDIANA	0.8755	0.8736	-0.22
IOWA	0.8315	0.8550	2.83

ADDENDUM C.—COMPARISON OF PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR FY 2003 AND PROPOSED CY 2005—Continued

Rural area	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003-proposed CY 2005
KANSAS	0.7923	0.8088	2.08
KENTUCKY	0.8079	0.7844	-2.91
LOUISIANA	0.7567	0.7291	-3.65
MAINE	0.8874	0.9039	1.86
MARYLAND	0.8946	0.9179	2.60
MASSACHUSETTS	1.1288	1.0217	-9.49
MICHIGAN	0.9000	0.8741	-2.88
MINNESOTA	0.9151	0.9339	2.05
MISSISSIPPI	0.7680	0.7583	-1.26
MISSOURI	0.8021	0.7829	-2.39
MONTANA	0.8481	0.8701	2.59
NEBRASKA	0.8204	0.9035	10.13
NEVADA	0.9577	0.9833	2.67
NEW HAMPSHIRE	0.9796	0.9940	1.47
New Jersey	.....	.....	
NEW MEXICO	0.8872	0.8529	-3.87
NEW YORK	0.8542	0.8403	-1.63
NORTH CAROLINA	0.8666	0.8501	-1.90
NORTH DAKOTA	0.7788	0.7743	-0.58
OHIO	0.8613	0.8760	1.71
OKLAHOMA	0.7590	0.7537	-0.70
OREGON	1.0303	1.0050	-2.46
PENNSYLVANIA	0.8462	0.8348	-1.35
PUERTO RICO	0.4356	0.4047	-7.09
RHODE ISLAND	.....	.....	.....
SOUTH CAROLINA	0.8607	0.8640	0.38
SOUTH DAKOTA	0.7815	0.8393	7.40
TENNESSEE	0.7877	0.7876	-0.01
TEXAS	0.7821	0.7910	1.14
UTAH	0.9312	0.8843	-5.04
VERMONT	0.9345	0.9375	0.32
VIRGINIA	0.8504	0.8480	-0.28
VIRGIN ISLANDS	0.7845	0.7457	-4.95
WASHINGTON	1.0179	1.0072	-1.05
WEST VIRGINIA	0.7975	0.8084	1.37
WISCONSIN	0.9162	0.9498	3.67
WYOMING	0.9007	0.9182	1.94

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003-proposed CY 2005
0040	0.7792	0.8009	2.78
0060	0.4587	0.4294	-6.39
0080	0.9600	0.9055	-5.68
0120	1.0594	1.1266	6.34
0160	0.8384	0.8570	2.22
0200	0.9315	1.0485≤	12.56
0220	0.7859	0.8171	3.97
0240	0.9735	0.9536	-2.04
0280	0.9225	0.8462	-8.27
0320	0.9034	0.9178	1.59
0380	1.2358	1.2109	-2.01
0440	1.1103	1.0817	-2.58
0450	0.8044	0.7881	-2.03
0460	0.8997	0.9115	1.31
0470	0.4337	0.3757	-13.37
0480	0.9876	0.9502	-3.79
0500	1.0211	1.0203	-0.08
0520	0.9991	0.9971	-0.20
0560	1.1017	1.0907	-1.00
0580	0.8325	0.8215	-1.32
0600	1.0264	0.9208	-10.29
0640	0.9637	0.9596	-0.43
0680	0.9899	1.0036	1.38

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003-proposed CY 2005
0720	0.9929	0.9908	-0.21
0733	0.9664	0.9955	3.01
0743	1.3202	1.2335	-6.57
0760	0.8294	0.8354	0.72
0840	0.8324	0.8616	3.51
0860	1.2282	1.1643	-5.20
0870	0.9042	0.8847	-2.16
0875	1.2150	1.1967	-1.51
0880	0.9022	0.8961	-0.68
0920	0.8757	0.8649	-1.23
0960	0.8341	0.8447	1.27
1000	0.9222	0.9199	-0.25
1010	0.7972	0.7505	-5.86
1020	0.8907	0.8588	-3.58
1040	0.9109	0.9111	0.02
1080	0.9310	0.9352	0.45
1123	1.1235	1.1291	0.50
1125	0.9689	1.0046	3.68
1145	0.8535	0.8525	-0.12
1150	1.0944	1.0614	-3.02
1240	0.8880	1.0125	14.02
1260	0.8821	0.9219	4.51
1280	0.9365	0.9339	-0.28
1303	1.0052	0.9322	-7.26
1310	0.4371	0.4061	-7.09
1320	0.8932	0.8895	-0.41
1350	0.9690	0.9244	-4.60
1360	0.9056	0.8975	-0.89
1400	1.0635	0.9527	-10.42
1440	0.9235	0.9420	2.00
1480	0.8898	0.8876	-0.25
1520	0.9850	0.9712	-1.40
1540	1.0438	1.0295	-1.37
1560	0.8976	0.9207	2.57
1580	0.8628	0.8980	4.08
1600	1.1044	1.0852	-1.74
1620	0.9745	1.0543	8.19
1640	0.9381	0.9595	2.28
1660	0.8406	0.8022	-4.57
1680	0.9670	0.9626	-0.46
1720	0.9916	0.9793	-1.24
1740	0.8496	0.8396	-1.18
1760	0.9307	0.9450	1.54
1800	0.8374	0.8690	3.77
1840	0.9751	0.9753	0.02
1880	0.8729	0.8647	-0.94
1890	1.1453	1.0545	-7.93
1900	0.7847	0.8662	10.39
1920	0.9998	1.0049	0.51
1950	0.8859	0.8643	-2.44
1960	0.8835	0.8774	-0.69
2000	0.9282	0.9232	-0.54
2020	0.9062	0.8900	-1.79
2030	0.8973	0.8894	-0.88
2040	0.8055	0.8122	0.83
2080	1.0601	1.0905	2.87
2120	0.8791	0.9267	5.41
2160	1.0448	1.0227	-2.12
2180	0.8137	0.7597	-6.64
2190	0.9356	0.9825	5.01
2200	0.8795	0.8748	-0.53
2240	1.0368	1.0356	-0.12
2281	1.0684	1.1658	9.12
2290	0.8952	0.9139	2.09
2320	0.9265	0.9065	-2.16
2330	0.9722	0.9279	-4.56
2335	0.8416	0.8445	0.34
2340	0.8376	0.9001	7.46
2360	0.8925	0.8699	-2.53
2400	1.0944	1.0940	-0.04

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003-proposed CY 2005
2440	0.8177	0.8395	2.67
2520	0.9684	0.9115	-5.88
2560	0.8889	0.9363	5.33
2580	0.8100	0.8637	6.63
2620	1.0682	1.0611	-0.66
2640	1.1135	1.1178	0.39
2650	0.7792	0.7883	1.17
2655	0.8780	0.8961	2.06
2670	1.0066	1.0219	1.52
2680	1.0297	1.0165	-1.28
2700	0.9680	0.9372	-3.18
2710	0.9823	1.0046	2.27
2720	0.7895	0.8303	5.17
2750	0.9693	0.8786	-9.36
2760	0.9457	0.9737	2.96
2800	0.9446	0.9538	0.97
2840	1.0216	1.0408	1.88
2880	0.8505	0.8049	-5.36
2900	0.9871	0.9459	-4.17
2920	0.9465	0.9403	-0.66
2960	0.9584	0.9343	-2.51
2975	0.8281	0.8467	2.25
2980	0.8892	0.8779	-1.27
2985	0.8897	0.9092	2.19
2995	0.9456	0.9900	4.70
3000	0.9525	0.9520	-0.05
3040	0.8950	0.8810	-1.56
3060	0.9237	0.9444	2.24
3080	0.9502	0.9586	0.88
3120	0.9282	0.9312	0.32
3150	0.9100	0.9183	0.91
3160	0.9122	0.9400	3.05
3180	0.9268	0.9940	7.25
3200	0.9418	0.9066	-3.74
3240	0.9223	0.9286	0.68
3283	1.1549	1.1068	-4.16
3285	0.7659	0.7362	-3.88
3290	0.9028	0.9502	5.25
3320	1.1457	1.1014	-3.87
3350	0.8385	0.7721	-7.92
3360	0.9892	1.0117	2.27
3400	0.9636	0.9565	-0.74
3440	0.8903	0.8851	-0.58
3480	0.9717	1.0039	3.31
3500	0.9587	0.9655	0.71
3520	0.9532	0.9146	-4.05
3560	0.8607	0.8406	-2.34
3580	0.9275	0.8900	-4.04
3600	0.9381	0.9548	1.78
3605	0.8239	0.8402	1.98
3610	0.7976	0.7589	-4.85
3620	0.9849	0.9583	-2.70
3640	1.1190	1.0923	-2.39
3660	0.8268	0.8203	-0.79
3680	0.8329	0.7981	-4.18
3700	0.7749	0.7934	2.39
3710	0.8613	0.8721	1.25
3720	1.0595	1.0350	-2.31
3740	1.0790	1.0603	-1.73
3760	0.9736	0.9642	-0.97
3800	0.9686	0.9772	0.89
3810	1.0399	0.9242	-11.13
3840	0.8970	0.8509	-5.14
3850	0.8971	0.8986	0.17
3870	0.9400	0.9290	-1.17
3880	0.8475	0.8105	-4.37
3920	0.9278	0.9068	-2.26
3960	0.7965	0.7959	-0.08
3980	0.9357	0.8931	-4.55
4000	0.9078	0.9883	8.87

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003-proposed CY 2005
4040	0.9726	0.9659	-0.69
4080	0.8472	0.8747	3.25
4100	0.8745	0.8784	0.45
4120	1.1521	1.1121	-3.47
4150	0.7923	0.8644	9.10
4200	0.8315	0.8212	-1.24
4243	0.9179	0.9562	4.17
4280	0.8581	0.8053	-6.15
4320	0.9483	0.9258	-2.37
4360	0.9892	1.0208	3.19
4400	0.9097	0.8827	-2.97
4420	0.8629	0.8739	1.27
4480	1.2001	1.1732	-2.24
4520	0.9276	0.9163	-1.22
4600	0.9646	0.8777	-9.01
4640	0.9219	0.9018	-2.18
4680	0.9204	0.9596	4.26
4720	1.0467	1.0395	-0.69
4800	0.8900	0.9105	2.30
4840	0.4914	0.4769	-2.95
4880	0.8428	0.8602	2.06
4890	1.0498	1.0534	0.34
4900	1.0253	0.9633	-6.05
4920	0.8920	0.9234	3.52
4940	0.9837	1.0576	7.51
5000	0.9802	1.0026	2.29
5015	1.1213	1.1360	1.31
5080	0.9893	1.0076	1.85
5120	1.0903	1.1067	1.50
5140	0.9157	0.9618	5.03
5160	0.8108	0.7933	-2.16
5170	1.0498	1.1966	13.98
5190	1.0674	1.0889	2.01
5200	0.8137	0.7913	-2.75
5240	0.7734	0.8300	7.32
5280	0.9284	0.8580	-7.58
5330	0.8976	0.9022	0.51
5345	0.9754	1.0596	8.63
5360	0.9578	1.0108	5.53
5380	1.3357	1.2921	-3.26
5483	1.2408	1.2254	-1.24
5523	1.1767	1.1596	-1.45
5560	0.9046	0.9103	0.63
5600	1.4414	1.3588	-5.73
5640	1.1381	1.1625	2.14
5660	1.1387	1.1171	-1.90
5720	0.8574	0.8895	3.74
5775	1.5072	1.5221	0.99
5790	0.9402	0.9153	-2.65
5800	0.9397	0.9632	2.50
5880	0.8900	0.8966	0.74
5910	1.0960	1.1007	0.43
5920	0.9978	0.9754	-2.24
5945	1.1474	1.1612	1.20
5960	0.9640	0.9742	1.06
5990	0.8344	0.8434	1.08
6015	0.8865	0.8124	-8.36
6020	0.8127	0.8288	1.98
6080	0.8645	0.8306	-3.92
6120	0.8739	0.8886	1.68
6160	1.0713	1.0824	1.04
6200	0.9820	0.9982	1.65
6240	0.7962	0.8673	8.93
6280	0.9365	0.8756	-6.50
6323	1.0235	1.0439	1.99
6340	0.9372	0.9602	2.45
6360	0.5169	0.4954	-4.16
6403	0.9794	1.0112	3.25
6440	1.0667	1.1403	6.90
6483	1.0854	1.1062	1.92

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003-proposed CY 2005
6520	0.9984	0.9613	-3.72
6560	0.8820	0.8752	-0.77
6580	0.9218	0.9441	2.42
6600	0.9334	0.9045	-3.10
6640	0.9990	1.0258	2.68
6660	0.8846	0.8912	0.75
6680	0.9295	0.9216	-0.85
6690	1.1135	1.1835	6.29
6720	1.0648	1.0456	-1.80
6740	1.1491	1.0520	-8.45
6760	0.9477	0.9398	-0.83
6780	1.1365	1.0975	-3.43
6800	0.8614	0.8429	-2.15
6820	1.2139	1.1504	-5.23
6840	0.9194	0.9196	0.02
6880	0.9625	0.9626	0.01
6895	0.9228	0.8998	-2.49
6920	1.1500	1.1849	3.03
6960	0.9650	0.9696	0.48
6980	0.9700	1.0215	5.31
7000	0.8021	1.0013	24.83
7040	0.8855	0.9081	2.55
7080	1.0367	1.0557	1.83
7120	1.4623	1.3823	-5.47
7160	0.9945	0.9487	-4.61
7200	0.8374	0.8168	-2.46
7240	0.8753	0.9023	3.08
7320	1.1131	1.1267	1.22
7360	1.4142	1.4712	4.03
7400	1.4145	1.4744	4.23
7440	0.4741	0.4802	1.29
7460	1.1271	1.1118	-1.36
7480	1.0481	1.0771	2.77
7485	1.3646	1.4780	8.31
7490	1.0712	1.0590	-1.14
7500	1.3046	1.2962	-0.64
7510	0.9425	0.9630	2.18
7520	0.9376	0.9460	0.90
7560	0.8599	0.8523	-0.88
7600	1.1474	1.1479	0.04
7610	0.7869	0.7881	0.15
7620	0.8697	0.8949	2.90
7640	0.9255	0.9617	3.91
7680	0.8987	0.9112	1.39
7720	0.9046	0.9094	0.53
7760	0.9257	0.9441	1.99
7800	0.9802	0.9447	-3.62
7840	1.0852	1.0661	-1.76
7880	0.8659	0.8738	0.91
7920	0.8424	0.8597	2.05
8003	1.0927	1.0174	-6.89
8050	0.8941	0.8462	-5.36
8080	0.8804	0.8281	-5.94
8120	1.0506	1.0564	0.55
8140	0.8273	0.8520	2.99
8160	0.9714	0.9394	-3.29
8200	1.0940	1.1078	1.26
8240	0.8504	0.8656	1.79
8280	0.9065	0.9024	-0.45
8320	0.8599	0.8582	-0.20
8360	0.8088	0.8414	4.03
8400	0.9810	0.9525	-2.91
8440	0.9199	0.8904	-3.21
8480	1.0432	1.0276	-1.50
8520	0.8911	0.8926	0.17
8560	0.8332	0.8729	4.76
8600	0.8130	0.8440	3.81
8640	0.9521	0.9502	-0.20
8680	0.8465	0.8295	-2.01
8720	1.3354	1.3517	1.22

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003-proposed CY 2005
8735	1.1096	1.1105	0.08
8750	0.8756	0.8469	-3.28
8760	1.0031	1.0573	5.40
8780	0.9429	0.9964	5.67
8800	0.8073	0.8146	0.90
8840	1.0851	1.0971	1.11
8920	0.8069	0.8633	6.99
8940	0.9782	0.9570	-2.17
8960	0.9939	1.0059	1.21
9000	0.7670	0.7449	-2.88
9040	0.9520	0.9473	-0.49
9080	0.8498	0.8395	-1.21
9140	0.8544	0.8486	-0.68
9160	1.1173	1.1121	-0.47
9200	0.9640	0.9237	-4.18
9260	1.0569	1.0323	-2.33
9270	0.9434	0.9378	-0.59
9280	0.9026	0.9150	1.37
9320	0.9358	0.9518	1.71
9340	1.0276	1.0364	0.86
9360	0.8589	0.8871	3.28

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a Notice such as this takes effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations and makes no substantive changes to the regulation. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 04–17417 Filed 7–29–04; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2145, MB Docket No. 04–260, RM–10616]

Television Broadcast Service and Digital Television Broadcast Service; Tulsa, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Global Education Development, Inc., Broadcasting for the Challenged, Inc., Faith That Pleases God Church, Family Educational Broadcasting, Inc., Creative Educational Media Corporation, Oral Roberts University, and Community Television Educators, Inc., jointly referred to as the ''Applicants'', proposing the substitution of DTV channel *26 for TV channel *63 at Tulsa, Oklahoma. DTV Channel *26 can be allotted to Tulsa, Oklahoma, at reference coordinates 36–04–56 N. and 95–45–27 W. with a power of 200, a height above average terrain HAAT of 94 meters.

DATES: Comments must be filed on or before September 9, 2004, and reply comments on or before September 24, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph E. Dunne III, Esquire, P.O. Box 9203, Durango, Colorado 81302–9203 (Counsel for the Applicants).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–260, adopted July 15, 2004, and released July 19, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via e-mail *joshir@erols.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Oklahoma is amended by removing TV channel *63 at Tulsa.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma is amended by adding DTV channel *26 at Tulsa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–17341 Filed 7–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 04–232; FCC 04–145]

Retention by Broadcasters of Program Recordings

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission proposes to require that television and radio stations retain program recordings for a period of time for purposes of enforcing the statutory prohibition against obscene, indecent, or profane broadcast programming, among other reasons.

DATES: Comments due on or before August 27, 2004; reply comments are due on or before September 27, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. For further filing information, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Ben Golant, 202–418–7111 or *Ben.Golant@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Notice of Proposed Rulemaking, FCC 04–145, adopted June 21, 2004 and released July 7, 2004. The full text of the Commission's NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, Portals II, Room CY–B402, 445 12th St., SW., Washington, DC 20554, or may be reviewed via Internet at *http://www.fcc.gov/mb.*

Synopsis of the Further Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking (''NPRM''), we propose to require that broadcasters retain recordings of their programming for some limited period of time (*e.g.*, 60 or 90 days) in order to increase the effectiveness of the Commission's process for enforcing restrictions on obscene, indecent, and profane broadcast programming.

2. It is a violation of federal law to broadcast obscene, indecent, or profane programming. Specifically, Title 18 of the United States Code, Section 1464, prohibits the utterance of ''any obscene, indecent, or profane language by means of radio communication.'' Congress has given the Federal Communications Commission the responsibility for administratively enforcing 18 U.S.C. 1464. In doing so, the Commission may, for example, revoke (or decline to renew) a station license or impose a monetary forfeiture for the broadcast of such prohibited material.

3. The Commission's enforcement policy under Section 1464 has been shaped by a number of judicial and legislative decisions. In particular, because the Supreme Court has determined that obscene speech is not entitled to First Amendment protection, obscene speech cannot be broadcast at any time. Indecent speech is protected by the First Amendment and cannot be outlawed completely, but, pursuant to Commission regulations, implementing a subsequent statute and court decision, the airing of such programming is restricted to the hours of 10 p.m. to 6 a.m., when children are less likely to be in the audience. The courts have consistently upheld the Commission's authority to regulate indecent speech, albeit with certain limitations. In this NPRM, we seek comment on enhancing our enforcement processes through proposed program recording retention requirements for broadcast stations in order to improve the adjudication of complaints.

4. The Commission's current procedures for the filing and consideration of complaints were articulated in its Indecency Guidelines Policy Statement. The Commission does not independently monitor broadcasts for obscene, indecent, or profane material. Its enforcement actions are based on documented complaints received from the public. Given the sensitive nature of these cases and the critical role of context in a determination, it is important that the Commission be afforded as full a record as possible to evaluate allegations of objectionable programming. In order for a complaint to be considered, our practice is that it must generally include: (1) A significant excerpt from the program or a full or partial tape or transcript of the program; (2) the date and time of the broadcast; and (3) the

call sign of the station involved. Although a complainant is not required to provide a tape or transcript, he or she must provide sufficient information regarding the content at issue to place it in context. The amount of information provided need not be extensive.

5. The staff reviews each complaint to determine whether the relevant material may violate the obscenity, indecency or profanity standards and, in the case of indecency and profanity, whether the material was broadcast outside the safe harbor hours. If there is sufficient information in the complaint that the facts, if true, suggest a violation may have occurred, the staff will commence an investigation by issuing a letter of inquiry (''LOI'') that, among other things, requires the licensee to produce a recording or transcript of the program, if it has one. Otherwise, the complaint is generally dismissed or denied. If, based on the complaint, the licensee's response to the LOI and other facts in the record, it appears that a violation has occurred, the staff or the Commission will take enforcement action, such as issuing a Notice of Apparent Liability (''NAL'') proposing a forfeiture or potentially an order to show cause to revoke the station's license.

6. We seek comment on steps the Commission could take to improve our complaint process and better enforce our existing standards by requiring broadcasters to retain recordings of their broadcast for a limited period of time. Because the specifics and context of the broadcast are critical to the determination of whether material is obscene, indecent, or profane, the more information the Commission can have in its possession about a program when it concludes an investigation and decides whether or not to initiate an enforcement proceeding, the more informed a decision it can make. Many complainants are able to provide enough detail for us to determine that enforcement action is warranted, even if the licensee has no transcript or recording of the program to provide in response to an LOI. In other cases, however, the Commission may lack a sufficient record where the licensee is unable to provide a tape or transcript in response to an LOI.

7. Accordingly, we propose to improve our indecency complaint process by requiring broadcasters to retain a recording of all material they air during the hours of 6 a.m. and 10 p.m., when children are likely to be in the audience, for a limited period of time. This approach would ensure that the Commission has a complete record before it in deciding whether to initiate enforcement proceedings after an investigation. We seek comment on this proposal, including the proper length of time a copy of programming should be retained by a licensee, such as 60 or 90 days. Our goal is to establish a retention period that is long enough to ensure that the recording will be available in response to an LOI, but not so long that it imposes unreasonable burdens. We also seek comment on whether the proposed record retention requirements should be crafted so that they can be useful to enforcement of other types of complaints based on program content. For example, the proposed record retention requirements may aid us in enforcing our children's television commercial limits and sponsorship identification requirements. We seek comment on whether there have been problems in enforcing those requirements that justify imposition of a retention requirement, as well as whether the benefits of this additional enforcement tool justify requiring broadcasters to record their programming 24 hours a day, rather than only 6 a.m. to 10 p.m., the hours when indecent programming is prohibited. We seek comment on how the proposed record retention requirement should apply to digital television and radio stations. Should the proposed rules apply to all digital streams, including programming offered on a subscription basis?

8. We seek comment on whether the proposed requirements should affect our established broadcast complaint process. Currently, we generally require a complainant to submit a tape, transcript, or significant excerpt before we will consider a complaint so that we have some sense of whether the material broadcast may have violated the law before we commence an inquiry. We ask whether we should change this policy if we were to require records to be retained. For example, a complaint containing a general description of the relevant broadcast programming may be adequate to trigger Commission action because we could obtain the actual recording from the station. We seek comment on this matter as well as other possible revisions to our current complaint process.

9. The proposed record retention requirements will affect the record-keeping practices of broadcast stations. We seek comment on the financial burden the proposals may impose. What are broadcasters' current practices in terms of recording programming and retaining copies of the recordings? What steps would a broadcast station have to take to comply with the proposed requirements? How much would it cost to keep programming for 60 days, 90 days? Does the development and increased use of digital recording and storage reduce the costs? We recognize that it may be more costly to retain high definition television content because of the equipment required to record such material. We propose that it would be permissible for such content to be recorded at a lower bit rate so that it is not as expensive to retain. We seek comment on this proposal. Are there any other means to reduce the financial costs of complying with the proposed requirements? We seek specific comment on the impact that retention rules may have on small broadcasters.

10. We are mindful that we must be cautious in our enforcement of Section 1464 with respect to indecency and profanity because free speech rights are involved. We therefore seek comment on whether our proposals raise any First Amendment issues.

11. We also seek comment on how the proposed record retention requirements may affect parties other than broadcast stations. For example, would the retention of third party commercial material, such as broadcast advertisements or infomercials, raise copyright or contractual issues? What other issues should we consider in this context? Although we seek comment on approaches for improving our enforcement process, we do not raise for comment in this proceeding our substantive standards for indecency or any other rules that may be implicated. Any comments beyond the scope of this NPRM will not be considered.

12. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under Section 1.1206(b) of the Commission's rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

13. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties must file comments on or before August 27, 2004,

and reply comments on or before September 27, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. Accessible formats (computer diskettes, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365.

14. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

15. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Best Copy and Printing, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at Suite CY–B402, 445 12th Street, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail, should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

16. The Regulatory Flexibility Act of 1980, as amended (''RFA''), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 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). By the issuance of this NPRM, we seek comment on the impact our suggested proposals would have on small business entities. The complete regulatory flexibility analysis is attached as Appendix A.

17. This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. It will be submitted to the Office of Management and Budget (''OMB'') for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

18. Written comments on the proposed new and modified information collections must be submitted on or before 60 days after date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie Smith@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy L.LaLonde@omb.eop.gov* or by fax to 202–395–5167. For more information concerning the information collection(s) contained in this document, contact Leslie Smith at 202–418–0217, or via the Internet at *Leslie Smith@fcc.gov*.

19. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via email at *bmillin@fcc.gov*. For additional information on this proceeding, contact Ben Golant, *ben.golant@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–7111.

20. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of this entire NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the NPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

21. *Need For, and Objectives of, the Proposed Rules.* This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposals to enhance the indecency enforcement process by requiring television and radio broadcast licensees to retain recordings of their programming for some limited period of time.

22. *Legal Basis.* The authority for this proposed rulemaking is contained in sections 1, 2, 4(i), 303, and 307, of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 307.

23. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as encompassing the terms ''small business,'' ''small organization,'' and ''small governmental entity.'' 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'').

24. *Television Stations.* The proposed rules and policies will apply to television broadcasting licensees, and potential licensees of television service.

The Small Business Administration defines a television broadcasting station that has $12 million or less in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program material. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. As of December 31, 2003, there were 1,733 full power television stations in the United States. There were also 605 Class A television stations and 2,129 low power television stations. Therefore, the rules we may adopt in this proceeding will likely affect nearly 4,500 television station licensees.

25. *Radio Stations.* The proposed rules and policies potentially will apply to all AM and FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. As of December 31, 2003, official Commission records indicate that 11,011 radio stations were in operation, of which 4,794 were AM stations. Thus, the proposed rules will affect over 11,000 radio stations.

26. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The proposed rules would impose additional reporting or recordkeeping requirements on existing television and radio stations. We seek comment on the possible cost burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

27. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission seeks comment on alternative timeframes for record retention in order to lessen the regulatory burden on broadcast television and radio stations. Specifically, we propose relatively short time frames in order to minimize the burden on broadcasters. We are also cognizant of the difficulties associated with recording high definition content, and for that reason propose to allow broadcasters to record programming at a lower bit rate. The Commission also seeks specific comments on the burden our proposals may have on small broadcasters. There may be unique circumstances these entities may face and we will consider appropriate action for small broadcasters at the time when a Report and Order is considered.

28. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–17428 Filed 7–29–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 69, No. 146

Friday, July 30, 2004

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Advisory Council on Historic Preservation.

Notice of Meeting

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, August 6, 2004. The meeting will be held at the Grand Casino Mille Lacs, 777 Grand Avenue, Onamia, Minnesota, beginning at 9 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and the Congress on matters relating to historic preservation and to common upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Preserve America Program Development
A. Preserve America 2005 Presidential Awards
B. Preserve America Communities
C. Preserve America History Teacher Awards
D. Preserve America Grants
III. Preserve America Executive Order Implementation
A. Development of Federal Agency Section 3 Reports
IV. Report of the Executive Committee
A. Revision of Section 106 Regulations
B. ACHP FY 2006 Budget Request
V. Native American Issues Discussion
A. Report of Native American Advisory Group
B. General Discussion
VI. Report of the Preservation Initiatives Committee
A. Heritage Tourism Initiatives
B. National Heritage Areas Policy Legislation
VII. Report of the Federal Agency Programs Committee
A. Interstate Highway System Programmatic Agreement
B. FCC Cell Tower Programmatic Agreement
C. Section 106 Training Course
D. Section 106 Cases
VIII. Report of the Communications, Education, and Outreach Committee
A. Preserve America Outreach and Events Coordination
B. Recent Preserve America Events
IX. Report of the Department of Defense Task Force
X. Report of the Archaeology Task Force
XI. Chairman's Report
A. ACHP Alumni Foundation
B. Legislative Issues
1. ACHP Reauthorization Legislation
2. Surface Transportation Reauthorization Legislation
3. Department of Veterans Affairs ''CARES'' Initiative
XII. Executive Director's Report
XIII. New Business
XIV. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #809, Washington, DC 20004.

Dated: July 26, 2004,

John M. Fowler,

Executive Director.

[FR Doc. 04–17351 Filed 7–29–04; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request an extension for a currently approved information collection procedure for Sugar Import Licensing Programs described in 7 CFR part 1530.

DATES: Comments should be received on or before September 28, 2004, to be assured of consideration.

ADDRESSES: Mail or deliver comments to Ron Lord, Deputy Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, 1400 Independence Ave., SW., Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Ron Lord, at the address above, or telephone at (202) 720–2916 or e-mail at *Ronald.Lord@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: Title: The Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program.

OMB Number: 0551–0015.

Expiration Date of Approval: December 31, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of the Sugar Import Licensing Program is to permit entry of raw cane sugar unrestricted by the quantitative limit established by the sugar tariff-rate quota for re-export in refined form or in a sugar containing product or for the production of certain polyhydric alcohols. These programs are in use by as many as 250 licensees currently eligible to participate. Under 7 CFR part 1530, licensees are required to submit the following: (1) ''Application for a license'' information required for participation as outlined in sections 1530.104; (2) ''Regular reporting'' of import, export, transfer, or use for charges and credits to licenses under section 1530.109; and (3) ''miscellaneous submission'' of bonds or letters of credit under section 1530.107, appeals to determinations by the licensing authority under section 1530.12, or requests to the licensing authority for waivers under section 1530.113. In addition, each participant

must maintain records on all program reports as set forth in section 1530.110. The information collected is used by the licensing authority to manage, plan, evaluate, and account for program activities. The reports and records are required to ensure the proper operation of these programs.

Estimate of Burden: (1) ''Application for a license'' would require 20 hours per response; (2) ''regular reporting'' would require between 10 and 15 minutes per transaction with the number of transactions varying per respondent; and (3) ''miscellaneous submission'' would require between 1 or 2 hours per bond or letter of credit, 2 to 10 hours per waiver request, and 10 to 100 hours per appeal.

Respondents: Sugar refiners, manufacturers of sugar containing products and producers of polyhydric alcohol.

Estimated Number of Respondents: 250.

Estimated Number of Responses per Respondent: New/Renew License: 1; Regular reporting: 75 transactions, average; Miscellaneous: Bonds/letters of credit: 1; Waiver requests: 1; Appeals: 1.

Estimated Total Burden Hours on Respondents: 2,075 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments: The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but should be submitted no later than 60 days from the date of this publication to be assured of consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Signed at Washington, DC, on July 8, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–17385 Filed 7–29–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

B&B Fire Recovery Project, Deschutes National Forest, Jefferson and Deschutes Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposed action to salvage dead and severely damaged trees, reduce post-harvest/smaller diameter fuels and plant trees on salvage units, and close or obliterate roads to assist in the restoration of the area burned in the Link and B&B Complex Fires on the Sisters Ranger District of the Deschutes National Forest. The wildfires, located about 12 miles northwest of Sisters, Oregon, burned approximately 95,600 acres across mixed ownership. The B&B Fire Recovery Project covers approximately 42, 143 acres of the total fire area of which 97% is on National Forest System Lands. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated during the scoping process. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by August 20, 2004.

ADDRESSES: Send written comments to District Ranger, c/o Tom Mafera, Sisters Ranger District, P.O. Box 249, Sisters, Oregon 97759.

FOR FURTHER INFORMATION CONTACT: Tom Mafera, Environmental Coordinator, P.O. Box 249, Sisters, Oregon 97759, phone 541–549–7744. E-mail: *comments-pacificnorthwest-deschutes-sisters@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose and Need. The purpose and need of the B&B Fire Recovery Project includes: (1) The harvest of dead and dying timber before it loses its economic value; (2) reduction of harvest slash and small trees within salvage units to establish fuel conditions that will reduce the potential for future uncharacteristic fire and restore fire as an ecosystem component; (3) reforestation of historically prevalent or common species (where seed sources are lacking) within salvage units to aid in the quicker development of desired large tree structure; (4) provide for public, administrative, and operational safety by removing hazard trees or fuels along open roads and areas of concentrated use; and (5) the reduction of open road densities, particularly within riparian reserves, to help protect and improve watershed conditions, fisheries, and wildlife habitat.

Proposed Action. This action includes the commercial salvage of dead trees within the Metolius Late Successional Reserve (LSR), and dead and dying trees in other land allocations, for a total of approximately 10,000 to 14,000 acres. Salvage logging will be conducted with a variety of logging techniques including ground-based, skyline, and helicopter yarding systems. No new permanent roads will be constructed. Fuels reduction and reforestation are also propose for the units where commercial salvage is proposed. Hazard trees with commercial value will also be salvaged along open roads within the project area. Timber harvest residues and non-merchantable material would be treated by a variety of methods including lopping and scattering, burning in place, piling and burning, or yarding tops to landings for burning. Timber would be offered for sale in the summer of 2005. Areas treated would be located outside of Riparian Reserves with the exception of areas where hazard trees need to be fallen or removed to address public safety. Dead trees (snags) and down wood would be left to meet wildlife objectives for the short and long term. Approximately 80 miles of roads would be either closed or decommissioned.

Scoping. Public participation will be sought at several points during the analysis, including listing of this project in the summer 2004 and subsequent issues of the Central Oregon Schedule of Projects and on the Deschutes National Forest Web site. Also, correspondence with agencies, organizations, tribes, and individuals who have indicated their interest would be conducted.

Issues. Preliminary issues identified include the potential effect of the proposed action on: Soil productivity; water quality and fish habitat; late successional reserves and late and old structure stands; snags and down wood habitat; future fuel loading in relation to the reintroduction of fire or future wildfire intensity, disturbance to cultural resources, the potential for noxious weed expansion, and the safety and use of the area by the public and land managers. A no action alternative will be analyzed in the EIS. Other alternatives would result from the scoping process and refined issues.

Comment: Public comments about this proposal are requested in order to

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

A draft EIS will be filed with the Environmental Protection Agency (EPA) and made available for public review by February 2005. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available June 2005.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986)) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Deschutes National Forest. The responsible official will decide where, and whether or not to salvage timber, reduce fuels, and reforest the area. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place. The B&B Fire Recovery decision and the reasons for the decision will be documented in the record of decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: July 26, 2004.

Michael C. Johnson,

Deputy Forest Supervisor.

[FR Doc. 04–17367 Filed 7–29–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on August 18–20, 2004. The first two days will be a field trip to the Barlow Ranger District on the Mt. Hood National Forest to monitor and discuss implementation of watershed improvement projects. The last day will be a business meeting starting at 8 a.m. at the Barlow Ranger District Office, 780 NE Court in Dufor, Oregon 97021. Agenda items will include a Recreation Strategy update and/or Update on NWFP social monitoring module, Upper Deschutes RMP/Davis Fire Recovery update, B and B fire update, and an open public forum from 11:30 till noon. All Deschutes Provincial Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent Road, P.O. Box 208, Crescent, OR 97754, phone (541) 433–3216.

Dated: July 26, 2004.

Leslie A.C. Weldon,

Forest Supervisor.

[FR Doc. 04–17366 Filed 7–29–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Monday, August 9, 2004.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Annual retirement of class A stock.
2. Annual class C stock dividend rate.
3. Status of loan loss reserve for FY 2004.
4. Privatization discussion.
5. Administrative and other issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9 a.m., Tuesday, August 10, 2004.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the May 14, 2004, board meeting.
3. Secretary's Report on loans approved.
4. Treasurer's Report.
5. Status report on the allowance for loan loss reserve for FY 2004.
6. Consideration of resolution to retire class A stock in FY 2004.
7. Consideration of resolution to set annual class C stock dividend rate.
8. Privatization discussion.

9. Governor's Remarks.
10. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: July 28, 2004.

Blaine D. Stockton,

Acting Governor, Rural Telephone Bank.

[FR Doc. 04–17544 Filed 7–28–04; 3:06 pm]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received on or Before:* August 29, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Binder, Looseleaf, 7510–00–965–2442.
NPA: York County Blind Center, York, Pennsylvania.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Service

Service Type/Location: Custodial & Grounds Maintenance, Nogales Border Patrol Station, 1500 W. LaQuinta Road, Nogales, Arizona.
NPA: J.P. Industries, Inc., Tucson, Arizona.
Contract Activity: U.S. Bureau of Customs and Border Protection, Washington, DC.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–17383 Filed 7–29–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* August 29, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 14, May 28, and June 4, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 26805, 30609, and 31588) of proposed additions to the Procurement List.

The following comments pertain to Flag, National, Interment (Additional 10% of the Veterans Affairs Requirement for a total of 50% on the Procurement List).

Comments were received from three of the current contractors for the interment flag and from a trade association for the flag industry. The association and one of the contractors claimed that increased demand for American flags after September 2001 had brought a number of new suppliers into the market, and now that the demand is decreasing, the loss of the partial requirement for the interment flag the Committee proposed to add to the Procurement List would have a larger, and thus severe, impact on the flag industry. These two commenters also cited a 1997 letter by the Committee's staff director indicating that the Committee would be unlikely to increase its share of the interment flag market unless the sole commercial contractor for interment flags at the time were to experience a substantial increase in its sales.

Another contractor indicated that Government contracts represent about 35 percent of total sales of flag manufacturers, so these manufacturers would be severely impaired if they continue to lose Government business to set-aside programs like the Committee's program. This contractor also claimed that its interment flag contract allows it to keep its plant operating year round, so loss of the contract would result in employment loss and other potential financial challenges. The third contractor noted that the flag industry is part of the textile industry, which has suffered severe losses in the past decade. The contractor stated that it had assisted two nonprofit agencies in learning how to produce the interment flag, and had been repaid with unauthorized disclosure of its confidential material and a failure by one nonprofit agency to pay the agreed-upon fee for the contractor's assistance. The contractor also claimed the other nonprofit agency was under investigation by its State concerning its nonprofit status. The contractor concluded, in light of these allegations, that it would not be in the interest of the Government to increase the portion of the Government requirement for interment flags set aside for these nonprofit agencies.

As the trade association and one of the contractors noted, the Government currently buys the 60 percent of its requirement for the interment flags which is not set aside for the Committee's program in equal shares from four contractors. According to the most recent figures available to the Committee, the difference between the value of the flags which the three contractors are selling to the Government and the flags they would sell if the proposed increase in the Committee set-aside were to occur represents a very small percentage of these contractors' total sales (the fourth contractor failed to provide sales figures to the Committee). Accordingly, the Committee has concluded that this small loss, even taking into account the nature of the flag market as described by the contractors, is not likely to have a severe adverse impact on the contractors. It should be noted that the proposed addition will only slightly lessen the number of interment flags available for commercial contractors to provide the Government, so the predicted impacts based on total loss of these contracts, including possible layoffs and other financial challenges, should not occur. As for the contractor mentioned in the Committee staff director's 1997 letter, its sales have increased substantially since then, so the Committee does not believe that it would be inappropriate to add the increased quantity of interment flags to the Procurement List.

The Committee questioned the two nonprofit agencies mentioned by the third contractor, and was told that both had paid in full for the consulting services of that contractor. Neither agency recalls making unauthorized releases of confidential information received from the contractor in connection with the consulting contract, which occurred a number of years ago. The contractor's questions concerning the nonprofit status of one of the nonprofit agencies come from that agency having bought the assets of two for-profit companies, in 2003 and 2004. The nonprofit agency did not acquire the companies as corporate entities. The assets were integrated into the nonprofit agency's manufacturing operations. The nonprofit agency's external auditors have determined that the nonprofit agency is not generating any business income unrelated to its nonprofit status as a result of these acquisitions. Therefore, the Committee does not believe that the nonprofit status of this agency is open to question.

The following material pertains to all of the items being added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.
2. The action will result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Product/NSN: Flag, National, Interment (Additional 10% of the Veterans Affairs Requirement for a total of 50% on the Procurement List) 8345–00–656–1432.
NPA: Goodwill Industries of South Florida, Inc., Miami, Florida.
NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama.
NPA: North Bay Rehabilitation Services, Inc., Rohnert Park, California.
Contract Activity: Department of Veterans Affairs, Washington, DC.

Services

Service Type/Location: Custodial Services, Naval Air Station Whidbey Island, Basewide, Oak Harbor, Washington.
NPA: New Leaf, Inc., Oak Harbor, Washington.
Contract Activity: Naval Facilities Engineering Command, Oak Harbor, Washington.
Service Type/Location: Medical Transcription, VA Medical Center, Building 36, Northport, New York.
NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.
Contract Activity: VA Medical Center—Northport, Northport, New York.
Service Type/Location: Telephone Switchboard Operations, VA Central California Health Care System, 2615 E. Clinton Avenue, Fresno, California.
NPA: Project HIRED, Santa Clara, California.
Contract Activity: VA Palo Alto Health Care System, Livermore, California.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 04–17384 Filed 7–29–04; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1343]

Expansion of Foreign-Trade Zone 171, Liberty County, Texas, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Liberty County Economic Development Corporation, grantee of Foreign-Trade Zone 171, submitted an application to the Board for authority to expand FTZ 171 to include three sites (306 acres) at 75 South Industrial Park (Site 7), 75 North Industrial Park (Site 8), and M&M Designs Industrial Park (Site 9), Huntsville, in Walker County, Texas, adjacent to the Houston Customs port of entry (FTZ Docket 49–2003; filed 9/23/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 57406, 10/3/03), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 171 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed in Washington, DC, this 22nd day of July 2004.

Holly Kuga,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–17420 Filed 7–29–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Rescission of Antidumping Duty New Shipper Review of Shanghai Ocean Flavor International Trading Co., Ltd.

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

SUMMARY: On April 30, 2003 the Department of Commerce (Department) initiated a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China covering the period September 1, 2002, through February 28, 2003. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 68 FR 23962 (May 6, 2003) (*Initiation Notice*). This new shipper review covered the Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean), an exporter of subject merchandise. For the reasons discussed below, we are rescinding the review of Shanghai Ocean.

EFFECTIVE DATE: July 30, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn at (202) 482–4236, AD/CVD Enforcement, Office 7, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Since the Department published its preliminary results for this new shipper review, *see Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 69 FR 9800 (March 2, 2004), the following events have occurred. On April 5, 2004, Shanghai Ocean and the Crawfish Processors Alliance (petitioners) filed case briefs. On April 12, 2004, Shanghai Ocean and the petitioners filed rebuttal briefs. On April 26, 2004, the Department issued a supplemental questionnaire. On May 1, 2004, Shanghai Ocean submitted its supplemental questionnaire response. On May 5, 2004, a hearing was held. On June 2, 2004, we asked Shanghai Ocean to explain the significant and material differences between the invoices and the packing lists provided to the Department by Shanghai Ocean and those provided to Customs and Border Protection (CBP) at time of entry. Moreover, we advised Shanghai Ocean that unless they demonstrated with supporting evidence that the documents they submitted to the Department were accurate, we may rescind this review consistent with section 351.214(b)(2)(iv) of the Department's regulations. Shanghai Ocean submitted its response on June 8, 2004.

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by CBP in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

Rescission of Review

Pursuant to sections 351.214(b)(2)(iv)(B–C) of the Department's regulations, a request for a new shipper review must contain documentation which establishes the volume of the exporter's first and subsequent shipments of subject merchandise to the United States and the date of the exporter's first sale of subject merchandise to an unaffiliated customer in the United States. At the time Shanghai Ocean requested this new shipper review, it appeared that the regulatory requirements were met and we initiated the new shipper review. *See Initiation Notice*. Since the initiation, Shanghai Ocean has acknowledged that the commercial documents it provided with the request for review, in accordance with sections 351.214(b)(2)(iv)(B–C) of the Department's regulations, were not the same commercial documents submitted to CBP at the time of entry. The Department's analysis of the two sets of commercial documents show that there are material and significant differences between the documents submitted to the Department and those submitted to CBP. As such, we have determined that we cannot rely on the commercial documents submitted to the Department in Shanghai Ocean's request for new shipper review. Accordingly, we are rescinding this new shipper review. Because much of the information on which the Department has based its decision is business proprietary information, our full analysis is set forth in our memorandum ''Freshwater Crawfish Tail Meat from The People's Republic of China: Rescission of the New Shipper Review of Shanghai Ocean Flavor International Trade Co., Ltd.'' dated July 23, 2004, a public version of which is on file in the Central Records Unit, Room B–099, Department of Commerce. Since the Department is rescinding this new shipper review, we are not calculating a company–specific rate for Shanghai Ocean. As such, we are not addressing issues raised in the case briefs by Shanghai Ocean and the petitioners regarding surrogate values and calculation methodology.

Cash Deposit Requirements

The Department will notify CBP that bonding is no longer permitted to fulfill security requirements for shipments from Shanghai Ocean of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice of rescission of antidumping duty new shipper review in the **Federal Register**. Further, effective upon publication of this notice for all shipments of the subject merchandise exported by Shanghai Ocean, and entered, or withdrawn from warehouse, for consumption, the cash deposit rate will be the PRC–wide rate of 223.01 percent *ad valorem*.

Assessment of Antidumping Duties

The Department will instruct CBP to assess antidumping duties on all appropriate entries. Since we are rescinding this antidumping duty new shipper review with respect to Shanghai Ocean, the PRC–wide rate of 223.01

percent in effect at the time of entry applies to all exports of freshwater crawfish tail meat from the PRC by Shanghai Ocean entered, or withdrawn from warehouse for consumption during the period of review (September 1, 2002, through February 28, 2003). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice of rescission of antidumping duty new shipper review.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under section 351.402(f) 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 orders (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 material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 23, 2004.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–17421 Filed 7–29–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Changshan Import/Export Co., Ltd.

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

SUMMARY: On September 30, 2003, the Department initiated new shipper reviews of the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China covering the period February 1, 2003, through July 31, 2003. *See Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 68 FR 57876 (October 7, 2003) (*Initiation Notice*). These new shipper reviews covered two exporters: Shanghai R&R Imp./Exp. Co., Ltd. (Shanghai R&R) and Changshan Import/Export Co., Ltd. (Changshan Ltd.). For the reasons discussed below, we are rescinding the review of Changshan Ltd.

EFFECTIVE DATE: July 30, 2004.

FOR FURTHER INFORMATION CONTACT: Dara Iserson or Thomas Gilgunn at (202) 482–4052 and (202) 482–4236, respectively; Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2003, the Department received a timely request for a new shipper review of the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China (PRC) from Changshan Ltd., an exporter of subject merchandise to the United States. On September 30, 2003, the Department initiated this new shipper review covering the period February 1, 2003, through July 31, 2003. *See Initiation Notice*. On June 15, 2004, Changshan Ltd. withdrew its request for review. Furthermore, on June 16, 2004, counsel notified the verification team that Changshan Ltd. would not participate in verification for its responses. (*See* Memorandum to File entitled ''Refusal of Verification by Changshan Ltd.'' dated July 16, 2004, which is on file in the Central Records Unit, Room B–099, Department of Commerce.)

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.

Rescission of New Shipper Review

Pursuant to section 351.214(f)(1) of the Department's regulations, the Department may rescind a new shipper review if a party that requested a review withdraws its request not later than 60 days after the date of publication notice of initiation of the requested review. As noted, Changshang Ltd. withdrew its request for a new shipper review on June 15, 2004, after the 60–day time limit. Although Changshan Ltd. withdrew its request after the 60–day deadline, we find no compelling reason not to permit withdrawal of the request for this new shipper review. Specifically, we had not started calculating a margin for Changshan Ltd. nor we had not yet started to verify Changshan Ltd.'s data. Furthermore, we did not receive any submissions opposing Changshan Ltd.'s withdrawal of its request for review. For these reasons, we have accepted Changshan Ltd.'s withdrawal and are rescinding the new shipper review of the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China (PRC) with respect to Changshan Ltd. in accordance with section 351.214(f)(1) of the Department's regulations.

Cash Deposits

The Department will notify U.S. Customs and Border Protection (CBP) that bonding is no longer permitted to fulfill security requirements for shipments from Changshan Ltd. of natural bristle paintbrushes and brush heads from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice of rescission of antidumping duty new shipper review in the **Federal Register**. Further, effective upon publication of this notice for all shipments of the subject merchandise exported by Changshan Ltd. and entered, or withdrawn from warehouse, for consumption, the cash deposit rate will be the PRC–wide rate, which is 351.92 percent.

Assessment of Antidumping Duties

The Department shall instruct CBP to assess antidumping duties on all appropriate entries. Since we are rescinding this antidumping duty new shipper review with respect to Changshan Ltd., the PRC–wide rate of 351.92 percent in effect at the time of entry applies to all exports of natural bristle paintbrushes and brush heads from the PRC by Changshan Ltd.

entered, or withdrawn, from warehouse for consumption during the period of review (February 1, 2003, through July 31, 2003). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice of rescission of antidumping duty new shipper review.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under section 351.402(f) 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 orders (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 material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 22, 2004.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–17422 Filed 7–29–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results and partial rescission of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period of January 1, 2002 through December 31, 2002. We preliminarily find that certain producers/exporters under review received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice.

We are also rescinding the review for Pastificio Antonio Pallante S.r.1. in accordance with 19 CFR 351.213(d)(3).

Interested parties are invited to comment on these preliminary results (*see* the ''Public Comment'' section of this notice).

DATES: *Effective Date:* August 30, 2004.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Andrew Smith, or Nathan Halat, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116, (202) 482–1276, and (202) 482–5256, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On July 24, 1996, the Department of Commerce (''the Department'') published a countervailing duty order on certain pasta (''pasta'' or ''subject merchandise'') from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996). On July 2, 2003, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 39511 (July 2, 2003). On July 31, 2003, we received requests for review from the following six producers/exporters of Italian pasta: Pastificio Fratelli Pagani S.p.A. (''Pagani''), Pastificio Antonio Pallante S.r.l. (''Pallante''), Pastificio Corticella S.p.A. (''Corticella'')/Pastificio Combattenti S.p.A. (''Combattenti'') (collectively, ''Corticella/Combattenti''), Pasta Zara S.p.A. (''Pasta Zara'')/Pasta Zara 2 S.p.A. (''Pasta Zara 2'')[1] (collectively ''Pasta Zara/Pasta Zara2''), Pasta Lensi S.r.l. (''Lensi''),[2] and Pastificio Carmine Russo S.p.A. (''Russo'')/Pastificio Di Nola S.p.A. (''Di Nola'') (collectively, ''Russo/Di Nola''). In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 22, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 68 FR 50750 (August 22, 2003).

On October 21, 2003 and December 1, 2003, we issued countervailing duty questionnaires to the Commission of the European Union (''EC''), the Government of Italy (''GOI''), Pagani, Pallante, Corticella/Combattenti, Pasts Zara/Pasta Zara 2, Lensi, and Russo/Di Nola. We received responses to our questionnaires in November and December 2003 and January 2004. We issued supplemental questionnaires to the respondents in January, February, March, May, and June 2004, and received responses to our supplemental questionnaires in February, March, May, and June 2004.

On October 23, 2003, Pallante withdrew its request for review. As discussed in the ''Partial Rescission'' section, below, we are rescinding this administrative review for Pallante.

On March 17, 2004, we published a notice extending the time limit for the preliminary results until July 30, 2004. *See Certain Pasta from Italy: Notice of Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 69 FR 12642 (March 17, 2004).

Partial Rescission

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Pallante withdrew its request for an administrative review on October 23, 2003, which is within the 90-day deadline. No other party requested a review of Pallante's sales. Therefore, because this withdrawal request was timely filed, we are rescinding this review with respect to Pallante in accordance with 19 CFR 351.213(d)(1). We will instruct U.S. Customs and

[1] During the first part of the period of review (calendar year 2002) (''POR''), Pasta Zara 2 was named Societa per Azioni Pasta Giulia S.p.A.; on September 9, 2002, the company changed its name to Pasta Zara 2.

[2] Lensi is the successor in interest to IAPC Italia S.r.l. *See Notice of Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Italy,* 68 FR 41553 (July 14, 2003).

Border Protection (''Customs'') to liquidate any entries from Pallante during the POR and to assess countervasiling duties at the rate that was applied at the time of entry.

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bats of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See Memorandum from Edward Easton to Richard Moreland,* dated August 25, 1997, which is on file in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department building.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See Letter from Susan H. Kuhbach to Barbara P. Sidari,* dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla S.r.L. (''Barilla''), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997. *See Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order on Certain Pasta From Italy,* 62 FR 65673 (December 15, 1997). On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''), circumvention of the antidumping order on pasta from Italy was occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently were repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland,* dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti-circumvention inquiry. *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 54888 (September 19, 2003).

Period of Review

The period for which we are measuring subsidies is January 1, 2002 through December 31, 2002.

Changes in Ownership

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the countervailing duty context. *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act,* 68 FR 37125 (June 23, 2003) (''*Modification Notice*'').[3] The Department's new methodology is based on a rebuttable ''baseline'' presumption that non-recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period (which normally corresponds to the average useful life (''AUL'') of the recipient's assets). However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's-length transaction for fair market value.

In considering whether the evidence presented demonstrates that the transaction was conducted at arm's length, we will be guided by the definition of an arm's-length transaction included in the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994), which defines an arm's-length transaction as a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the

[3] The *Modification Notice* explicitly addresses full privatizations, but notes that the Department would not make a decision at that time as to whether the new methodology would also be applied to other types of ownership changes and factual scenarios, such as partial privatizations or private-to-private sales. *See 68 FR at 37136.* We have now determined to apply the new methodology to full, private-to-private sales of a company (or its assets) as well. Among other reasons, we note that our prior ''same person'' methodology used for analyzing changes in ownership such as private-to-private sales has been found unlawful by the Court of Appeals for the Federal Circuit in *Allegheny Ludlum Corp.* v. *United States,* 367 F.3d 1339 (Fed. Cir. 2004).

transaction are those that would exist if the transaction had been negotiated between unrelated parties. *Id.* at 928.

In analyzing whether the transaction was for fair market value, the basic question is whether the full amount that the company or its assets (including the value of any subsidy benefits) were actually worth under the prevailing market conditions was paid, and paid through monetary or equivalent compensation. In making this determination, the Department will normally examine whether the seller acted in a manner consistent with the normal sales practices of private, commercial sellers in that country. Where an arm's-length sale occurs between purely private parties, we would normally expect the private seller to act in a manner consistent with the normal sales practices of private, commercial sellers in that country. With regard to a government-to-private transaction, however, where we cannot make that same assumption, a primary consideration in this regard normally will be whether the government failed to maximize its return on what it sold, indicating that the purchaser paid less for the company or assets than it otherwise would have had the government acted in a manner consistent with the normal sales practices of private, commercial sellers in that country.

If we determine that the evidence presented does not demonstrate that the change in ownership was at arm's length for fair market value, the baseline presumption will not be rebutted and we will find that the unamortized amount of any pre-sale subsidy benefit continues to be countervailable. Otherwise, if it is demonstrated that the change in ownership was at arm's length for fair market value, any pre-sale subsidies will be presumed to be extinguished in their entirety and, therefore, non-countervailable.

A party can, however, obviate this presumption of extinguishment by demonstrating that, at the time of the change in ownership, the broader market conditions necessary for the transaction price to reflect fairly and accurately the subsidy benefit were not present, or were severely distorted by government action (or, where appropriate, inaction). In other words, even if we find that the sales price was at ''market value,'' parties can demonstrate that the broader market conditions were severely distorted by the government and that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action.

Where a party demonstrates that these broader market conditions were severely distorted by government action and that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action, the baseline presumption will not be rebutted and the unamortized amount of any non-recurring pre-sale subsidy benefit will continue to be countervailable. Where a party does not make such a demonstration with regard to an arm's-length sale for fair market value, we will find all non-recurring pre-sale subsidies to be extinguished by the sale and, therefore, to be non-countervailable.

In the instant proceeding, Russo/Di Nola, Corticella/Combattenti, and Pasta Zara/Pasta Zara 2 underwent changes in ownership during the applicable period. Neither Corticella/Combattenti nor Pasta Zara/Pasta Zara 2 challenged the Department's baseline presumption that non-recurring subsidies continue to benefit the recipient over the allocation period. Thus, we preliminarily find for these respondents that any unallocated benefits from non-recurring subsidies received prior to their changes in ownership continue to be countervailable.

Regarding Russo/Di Nola, Di Nola was a family-owned and operated company until 1998, when it was purchased by another company (whose name is proprietary). In December 2001, Carmine Russo S.p.A. di Cicciano (''Cicciano''), which also had been a family-owned and -operated business, was purchased by Di Nola. At the time of the sale, Cicciano ceased to exist and the newly acquired company was legally reconstituted as Russo. In 2003, after the POR in this proceeding, the shares of Di Nola were fully absorbed into Russo and the two companies became a single corporate entity.

With regard to the Di Nola change in ownership in 1998, Russo/Di Nola reports that Di Nola did not receive any non-recurring subsidies prior to its purchase in 1998. Thus, we preliminarily find that we need not perform a change-in-ownership analysis for this transaction because Di Nola did not receive any subsidies prior to this change in ownership.

As for the Cicciano change in ownership, Russo/Di Nola reports that benefits under three programs were received by Cicciano prior to the change in ownership in 2001: Industrial Development Grants Under Law 488/92, Industrial Development Grants Under Law 64/86, and European Regional Development Fund (''ERDF'') Grants. According to Russo/Di Nola, the subsidies received by Cicciano were extinguished by the openly-negotiated, arm's-length sale of most of Cicciano's shares and all of its assets and, thus, none of these benefits are countervailable with respect to Russo/Di Nola under the Department's new change-in-ownership methodology.

As noted above, the first step in our new change-in-ownership methodology is to determine whether the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets. Based on record information, almost all of the outstanding shares of Cicciano were sold to Di Nola, and most of the former shareholders divested themselves of all ownership and operational control of the company (the exact numbers are proprietary). As noted above, Cicciano's name was formally changed to Russo and the company was legally registered with the appropriate authorities as a new entity. Thus, based on the information on the record, we preliminarily find that the former owner sold all or substantially all of Cicciano and its assets, retaining no control of the company or its assets.

Thus, we next examined whether the sale was an arm's-length transaction for fair market value. According to record information, the transaction was negotiated between unrelated, privately-owned parties. There is no record evidence of any pre-existing relationship or affiliation between Cicciano and Di Nola or any company in Di Nola's corporate group of companies. According to the share purchase agreement, the shares were valued by external independent auditors. An internal feasibility analysis and market study, as well as an external independent asset valuation study and a due diligence analysis, were also conducted of Cicciano by the purchasing entity to determine the company's financial status, brand strength, marketability, and asset value. After negotiations, the parties agreed to an all-cash share purchase in which almost all of the shares of Cicciano were purchased by Di Nola.

Based on the above information, we preliminarily find that the sale of Cicciano was an arm's-length transaction negotiated between unrelated parties, each acting in its own interest. As noted above, where an arm's-length sale occurs between purely parties, we would normally expect the private seller to act in a manner consistent with the normal sales practices of private, commercial sellers in that country. Because this transaction occurred between purely private parties, we also preliminarily find that this translation was conducted for fair

market value. Consequently, we preliminarily determine that any subsidies received by Cicciano prior to its change in ownership; are presumed to be extinguished in their entirety and, therefore, non-countervailable.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department's regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''IRS Tables''). For pasta, the IRS Tables prescribe an AUL of 12 years. None of the responding companies or interested parties disputed this allocation period. Therefore, we have used the 12-year allocation period for all respondents.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6) direct that the Department will attribute subsidies received by certain affiliated companies to the combined sales of those companies. Based on our review of the responses, we find that ''cross-ownership'' exists with respect to certain companies, as described below, and we have attributed subsidies accordingly.

Lensi: Lensi has no affiliated companies located in Italy and has, therefore, responded only on its own behalf.

Russo/Di Nola: Russo has responded on behalf of itself and Di Nola, both of whom manufacture the subject merchandise in the same group of companies. We preliminarily find that cross-ownership exists between Russo and Di Nola in accordance with 19 CFR 351.525(b)(6)(i) and (ii) are, thus, attributing any subsidies received by Russo and Di Nola to the combined sales of both companies.

Corticella/Combattenti: Corticella and Combattenti are both producers of subject merchandise and are owned by the same holding company, Euricom S.p.A. (''Euricom''), and companies in the Euricom group, Euricom group companies own 100 percent of Combattenti and 70 percent of Corticella. Other Euricom group companies are also involved in the production and distribution of subject merchandise. Specifically, one group company (whose name is proprietary), receives a commission on some of Corticella's home market sales. Also, Euricom group company Molini Certosa S.p.A. (''Certosa'') mills durum and non-durum wheat, some of which is an input for subject merchandise produced by Corticella and Combattenti. Additionally, Cooperative Lomellina Cerealicoltori (''CLC'') provides conversion services for both Combattenti and Corticella. CLC is not part of the Euricom group and Euricom is not a member of CLC, but a relative of Euricom's majority shareholder is a CLC cooperative member.

We preliminarily determine that cross-ownership does not exist with regard to CLC consistent with 19 CFR 351.525(b)(6)(vi). Therefore, we are not including subsidies received by CLC or CLC's sales in our subsidy calculations. With regard to the euricom group company that receives a commission on some of Corticella's home market sales, although cross-ownership may exist, the company does not meet any of the criteria stipulated in 19 CFR 351.525(b)(6)(ii) through (iv). Moreover, because Corticella/Combattenti has reported that this company acts as a selling agent only on Corticella's home market sales and not on its exports, 19 CFR 351.525(c) does not apply. Thus, we are also not including subsidies received by this company or this company's sales in our subsidy calculations.

With regard to Corticella and Combattenti, we preliminarily find that they each meet the criteria stipulated in 19 CFR 351.525(b)(6)(ii). As for Certosa, Corticella/Combattenti has argued that it does not have to report on behalf of Certosa because Certosa does not meet any of the criteria listed in 19 CFR 351.525(b)(6), including 19 CFR 351.525(b)(6)(iv). Specifically, citing to the *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India,* 67 FR 34905 (May 16, 2002) and the accompanying Issues and Decision memorandum at comment 15 (*''Pet Film from India''*), Corticella/Combattenti argues that, because Certosa's production is not ''dedicated almost exclusively'' to semolina (the input product for pasta) because it also mills soft wheat, 19 CFR 351.525(b)(6)(iv) does not apply. (Pagani makes an identical argument with regard to its affiliated durum and soft wheat milling operation, Molina di Rovato S.p.A. (''Rovato'').)

We disagree with Corticalla/Combattenti and Pagani's interpretation of *PET Film from India* and find that 19 CFR 351.525(b)(6)(iv) is applicable to both Corticalla/Combattenti and Pagani in regard to their affiliated milling operations. According to 19 CFR 351.525(b)(6)(iv), if there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Department will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations). The issue in question is not the different types of products the input supplier produces and in what overall proportions, but whether the input supplier is producing a product that is primarily dedicated to the production of the subject merchandise. So, for example, in this instance, the issue at hand is whether the input (semolina) is being produced primarily for pasta (the subject merchandise), and not whether the supplier mill's production is divided between different products (durum and soft wheat).

For all the reasons above, we are preliminarily treating Corticella, Combattenti, Euricom, and Certosa as a single respondent. However, Combattenti/Corticella has reported that Euricom and Certosa did not receive any POR subsidies. Thus, we are attributing any subsidies received to the combined sales of Corticella and Combattenti.

Pagani: Pagani is a producer of the subject merchandise. Rovato is an affiliated durum and soft wheat milling operation that sells some of the semolina that it mills from durum wheat to Pagani for use in its production of the subject merchandise. Both companies are owned by Alimco Srl. (''Alimco''), which is a holding company. During the POR, all three companies shared a common president and board members. Also, Riccardi Srl. (''Riccardi'') is an affiliated agent through whom Pagani sold pasta for sales to certain pasta customers.

With regard to Riccardi, although cross-ownership may exist, the company does not itself meet any of the criteria stipulated in 19 CFR 351.525(b)(6). Moreover, Pagani has reported that Riccardi did not receive any subsidies; thus, 19 CFR 351.525(c) is not applicable. Therefore, we are not including subsidies received by Riccardi or Riccardi's sales in our subsidy calculations.

As for Alimco and Rovato, based on record information and on 19 CFR 351.525(b)(6)(iii) and (iv), respectively (*see also* above discussion under ''Attribution of Subsidies'' for Corticella/Combattenti), we are treating Alimco, Rovato, and Pagani as a single

respondent. Pagani has reported that neither Alimco nor Rovato received any subsidy benefits during the POR. Thus, we are attributing any subsidies received to Pagani's sales only.

Pasta Zara/Pasta Zara 2: Pasta Zara and its affiliate Pasta Zara 2 are both producers of the subject merchandise. As discussed in the July 22, 2004 memorandum to Susan Kuhback entitled ''Pasta Zara S.p.A.—Attribution Issues'' (which is on file in the Department's CRU), we have determined that cross-ownership exits with regard to Pasta Zara and Pasta Zara 2 in accordance with 19 CFR 351.525(b)(6)(vi). Therefore, we are treating Pasta Zara, Pasta Zara 2, and Pasta Zara's parent company (whole name is proprietary) as a single entity in accordance with 19 CFR 351.525(b)(6)(ii) and (iii). Pasta Zara/Pasta Zara 2 has reported that Pasta Zara's parent company had no POR sales and received no POR subsidies. Thus, we are attributing any subsidies received to the combined sales of Pasta Zara and Pasta Zara 2.

Discount Rates and Benchmarks for Loans

Pursuant to 19 CFR 351.524(d)(3)(i)(B), we used the national average cost of long-term fixed-rate loans as discount rates for allocating non-recurring benefits over time because none of the companies for which we need such discount rates took any loans in the years in which the government agreed to provide the subsidies in question.

For benchmark rates, in accordance with 19 CFR 351.505(a), we used the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is defined as one that, when compared to the loan being examined, has similarities in the structure of the loan (*e.g.,* fixed interest rate v. variable interest rate), the maturity of the loan (*e.g.,* short-term v. long-term), and the currency in which the loan is denominated. In instances where no applicable company-specific comparable commercial loans were available, we used a national average interest rate for comparable commercial loans as allowed under 19 CFR 351.505(a)(3)(ii).

Where we relied on national average interest rates, for years prior to 1995, we used the Bank of Italy reference rate adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, consisted with past practice in this proceeding. For subsidies received in 1995 and later, we used the Italian Bankers' Association interest rate, increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges.

Analysis of Programs

I. Programs Preliminarily Determined To Confer Subsidies During the POR

A. Export Marketing Grants Under Law 304/90

Under Law 304/90, the GOI provided grants to promote the sale of Italian food and agricultural products in foreign markets. The grants were given for pilot projects aimed at developing links and integrating marketing efforts between Italian food producers and foreign distributors. The emphasis was on assisting small- and medium-sized enterprises (''SMEs'').

Corticella received a grant under this program in 1993 to assist it in establishing a sales office and network in the United States. No other respondent covered by this review received benefits under this program during the POR.

In the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy,* 61 FR 30288 (June 14, 1996) (''*Pasta Investigation*''), the Department determined that these exports marketing grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be specific within the meaning of section 771(5A)(B) of the Act because their receipt was contingent upon exportation. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants confer a countervailable subsidy.

Also in *Pasta Investigation*, the Department treated export marketing grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment.

Because the amount of the grant that was approved by the GOI exceeded 0.5 percent of Corticella's exports to the United States in the year of approval, we used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit over time. We divided the benefit attributable to the POR by the value of the companies' total exports to the United States in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 304/90 export marketing grants to be 0.09 percent *ad valorem* for Corticella/Combattenti.

B. *Industrial Development Grants Under Law 488/92*

In 1986, the European Union (''EU'') initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno (southern Italy). After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1, Objective 2, and Objective 5(b) areas by the EU.[4] The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants. (Loans are not provided under Law 488/92.)

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this ranking.

Russo/Di Nola is the only respondent in this proceeding that reported receiving grants under Law 488/92 which could potentially confer a benefit during the POR. Specifically, Russo's predecessor company, Cicciano, received three separate grants through this program. For the two grants approved in 1996, Cicciano received all of the payments under these grants prior to the change in ownership. For the one grant approved in 1997, most of the payments to Cicciano were made prior to Cicciano's purchase by Di Nola; however, part of the payment was made subsequent to the change in ownership in December 2001.

In past reviews in this proceeding, we found grants made through this program to be countervailable. *See, e.g., Certain Pasta from Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489, 44490–91 (August 16, 1999) (''*Pasta Second Review*''). Pursuant to section 771(5) of the Act, the grants are a direct transfer of funds from the GOI bestowing a benefit in the amount of the

[4] Objective 1 covers projects located in underdeveloped regions; Objective 2 addresses areas in industrial decline; and Objective 5 pertains to agricultural areas.

grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

With regard to the benefits under this program received prior to Cicciano's change in ownership, as discussed above in the ''Changes In Ownership'' section, we preliminarily find that any pre-sale subsidies received by Cicciano are non-countervailable during the POR.

As for the benefits provided subsequent to the change in ownership, in the *Pasta Second Review*, the Department treated industrial development grants under Law 488/92 as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment.

Because the amount of the grant that was approved by the GOI exceeded 0.5 percent of the reported total sales in the year of approval, we used the grant methodology described in 19 CFR 351.524(d) to allocate the post-change-in-ownership benefit over time. We divided the benefit attributable to the POR by the value of Russo/Di Nola's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.04 percent *ad valorem* for Russo/Di Nola.

C. Industrial Development Loans Under Law 64/86

In addition to the Law 64/86 industrial development grants discussed below, Law 64/86 also provided reduced rate industrial development loans with interest contributions paid by the GOI on loans taken by companies constructing new plants or expanding or modernizing existing plants in the Mezzogiorno. As discussed below in the ''Industrial Development Grants Under Law 64/86'' section, pasta companies were eligible for interest contributions to expand existing plants, but not to establish new plants. The fixed interest rates on these long-term loans were set at the reference rate with the GOI's interest contributions serving to reduce this rate. Although Law 64/86 was abrogated in 1992 (effective 1993), projects approved prior to 1993 were authorized to receive interest subsidies after 1993.

Russo's predecessor, Cicciano, had a Law 64/86 industrial development loan outstanding during the POR. No other respondent in this proceeding had Law 64/86 loans outstanding during the POR.

In the *Pasta Investigation*, the Department determined that Law 64/86 loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, these loans were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these loans confer a countervailable subsidy.

In accordance with 19 CFR 351.505(c)(2), we calculated the benefit for the POR by computing the difference between the Payments Russo made on its Law 64/86 loan during the POR and the payments Russo would have made on the benchmark loan. We divided the benefit received by Russo by Russo/Di Nola's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development loans to be 0.03 percent *ad valorem* for Russo/Di Nola.

D. European Regional Development Fund Grants

The ERDF is one of the EC's Structural Funds. It was created pursuant to the authority in Article 130 of the Treaty of Rome to reduce regional disparities in socio-economic performance within the EC. The ERDF program provides grants to companies located within regions which meet the criteria of Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) under the Structural Funds.

Russo/Cicciano is the only respondent in this proceeding that reported receiving grants under the ERDF which could potentially confer a benefit during the POR. Specifically, Russo's predecessor company, Cicciano, was approved for an ERDF grant in 1999. Most of the payments to Cicciano as part of this grant were made prior to Cicciano's purchase by Di Nola; however, some payments were received subsequent to the change in ownership in December 2001.

In the *Pasta Investigation*, the Department determined that ERDF grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the EU, the GOI, nor the responding companies have provided new information which would warrant reconsideration of our determination that ERDF grants are countervailable subsidies.

With regard to the benefits under this program received prior to Cicciano's change in ownership, as discussed above in the ''Changes In Ownership'' section, we preliminarily find that any pre-sale subsidies received by Cicciano are non-countervailable during the POR.

As for the benefits provided subsequent to the change in ownership, in the *Pasta Investigation*, the Department treated ERDF grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment.

Because the amount of the grant that was approved exceeded 0.5 percent of the reported total sales in the year of approval, we used the grant methodology described in 19 CFR 351.524(d) to allocate the post-change-in-ownership benefit over time. We divided the benefit attributable to the POR by the value of Russo/Di Nola's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the ERDF grant to be 0.01 percent *ad valorem* for Russo/Di Nola.

E. Law 236/93 Training Grants

Under Law 236/93, which is administered by the regional governments but funded by the GOI, grants are provided to Italian companies for worker training.

Pagani received a grant under this program during the POR. Its grant application was approved in 1999, and tranches of the grant were disbursed in 2000, 2001, and 2002.

In *Certain Pasta from Italy: Final Results of the Third Countervailing Duty Administrative Review,* 66 FR 11269 (February 23, 2001) (''*Pasta Third Review*''), the Department determined that Law 236/93 training grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, because the GOI and the regional government of Abruzzo did not provide adequate information about the distribution of grants under this program, we determined that Law 236/93 training grants were specific within the meaning of section 771(5A) of the Act. In this

review, neither the GOI nor any other party has provided sufficient information that would warrant reconsideration of or change our past determination that these grants are countervailable subsidies.

Consistent with 19 CFR 351.524(c)(1) and our treatment of this grant in the *Pasta Third Review*, the Department is treating this worker training subsidy as a recurring benefit. Therefore, to calculate the countervailable subsidy, we divided the amount received by Pagani in the POR by the companies' total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy for this program to be 0.06 percent *ad valorem* for Pagani.

F. Law 1329/65 Interest Contributions (Sabatini Law) (Formerly Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy)

The Sabatini Law was enacted in 1965 to encourage the purchase of machine tools and production machinery. It provides, *inter alia*, for one-time, lump-sum interest contributions from the Mediocredito Centrale toward interest owed on loans taken out to purchase these types of equipment.

Paasta Zara, Pagani, and Russo/Di Nola reported they received interest contributions under the Sabatini Law.

With respect to Pasta Zara and Pagani, in the *Pasta Investigation*, the Department concluded that the benefits provided in northern Italy under this program were not specific and, therefore, not countervailable. No party in this proceeding has challenged this past finding. Thus, we preliminarily find that any benefits provided to Pagani and Pasta Zara are not countervailable because these companies are located in northern Italy.

As for Russo/Di Nola, because the concessionary rate for companies is southern Italy was lower than the interest rate available to users of the program in northern Italy, the Department in the *Pasta Investigation* determined that the Sabatini Law interest contributions to companies in southern Italy were countervailable subsidies within the meaning of section 771(5) of the Act. They were a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies. In addition, they were regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that benefits provided under this program in southern Italy confer a countervailable subsidy.

The Department also determined in the *Pasta Investigation* and in subsequent reviews of this order that companies were able to anticipate the interest contributions at the time the loans were taken out. Consequently, in accordance with 19 CFR 351.508(c)(2) and 19 CFR 351.505(c)(2), any benefit would be countervailed in the year of receipt. *See also Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review,* 66 FR 40987 (August 6, 2001) (unchanged in *Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review,* 66 FR 64214 (December 12, 2001) and *Certain Pasta from Italy: Amended Final Results of the Fourth Countervailing Duty Administrative Review,* 67 FR 59 (January 2, 2002)). No new information has been placed on the record of this review that would cause us to depart from this practice.

In the instant proceeding Russo/Di Nola reported that Di Nola received interest contributions under this program during the POR. To calculate the countervailable subsidy for these interest contributions that were received during the POR, we divided the amount received by Russo/Di Nola in the POR by Russo/Di Nola's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy for this program to be 0.08 percent *ad valorem* for Russo/Di Nola.

G. Development Grants Under Law 30 of 1984

Law 30 of 1984 was enacted by the Regional Government of Friuli-Venezia Giulia to provide one-time development grants to companies for investments in industrial projects, including the construction of new plants and modernization or expansion of existing plants. Eligible companies can receive a grant amounting to 20 percent of the cost of the investment, with the grant not to exceed 1,000,000,000 lire. Only companies located in certain parts of the Friuli-Venezia Giulia region are eligible to receive benefits under this program in accordance with article 87, paragraph 3, letter c of the EC Treaty.

Pasta Zara 2 received a grant under this program during the POR for consultancy costs for company start-up and preparation of contracts relative to the purchase of plant equipment. No other respondent in this proceeding reported receiving POR benefits under this program.

In the *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Italy,* 64 FR 73244, 73255 (December 29, 1999) (''*CTL Plate from Italy*''), the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. Specifically, they are a financial contribution as defined in section 771(5)(D)(i) of the Act in the form of a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be specific within the meaning of section 771(5A)(D)(iv) of the act because eligibility for the grants was limited to certain geographical areas within the Friuli-Venezia Giulia region. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants confer a countervailable subsidy.

Also in *CTL Plate from Italy,* the Department treated grants under this program as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment.

Pursuant to 19 CFR 351.524(b)(2), the Department will normally expense non-recurring benefits provided under a particular subsidy program to the year in which benefits are received if the total amount approved under the program is less than 0.5 percent of relevant sales during the year in which the subsidy was approved. Because the amount of the development grant approved by the GOI for Pasta Zara 2 under this program was less than 0.5 percent of Pasta Zara 2's sales in the year in which the grant was approved, we allocated the entire amount of the grant to the POR (the year in which the grant was received) in accordance with 19 CFR 351.524(b)(2). We divided the full amount of the grant by the value of the companies' total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 30/84 development grants to be 0.02 percent *ad valorem* for Pasta Zara/Pasta Zara 2.

H. Social Security Reductions and Exemptions—Sgravi

Italian law allows companies, particularly those located in the Mezzogiorno, to use a variety of exemptions and reductions (''*sgravi*'') of the payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. The sgravi benefits are regulated by a complex set of laws and

regulations, and are sometimes linked to conditions such as creating more jobs. We have found in past proceedings that the benefits under some of these laws (*e.g.,* Laws 183/76 and 449/97) are available only to companies located in the Mezzogiorno and other disadvantaged regions. Other laws (*e.g.,* Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the south than for companies in other parts of the country.

The various laws identified as having provided sgravi benefits during the POR are the following: Law 407/90 (Pagani, Lensi, and Corticella), Law 223/91 (Combattenti, Pagani, Lensi, and Pasta Zara/Pasta Zara 2), Law 337/90 (Corticella), Law 56/87 (Pasta Zara), and Law 25/55 (Pasta Zara).

In the *Pasta Investigation* and subsequent reviews, the Department determined that the various forms of social security reductions and exemptions confer countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI bestowing a benefit in the amount of the savings received by the companies. Also, they were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they were limited to companies in the Mezzogiorno or because the higher levels of benefits were limited to companies in the Mezzogiorno.

In the instant review, no party in this proceeding challenged our past determinations that sgravi benefits were not countervailable for companies located outside of the Mezzogiorno. Therefore, because Pagani, Lensi, and Pasta Zara/Pasta Zara 2 are not located in the Mezzogiorno, we preliminarily find that these three companies did not receive any countervailable subsidies under this program during the POR.

Additionally, neither the GOI nor the responding companies challenged our past determinations that most sgravi benefits for companies in southern Italy confer a countervailable subsidy. However, Corticella/Combattenti, which is located in the Mezzogiorno, has claimed that benefits under the three *sgravi* laws through which it received benefits during the POR (Law 407/90, Law 223/91, and Law 337/90) are not specific. Specifically, Corticella/Combattenti claim that benefits under these three laws are not countervailable because they are generally available throughout Italy.

Based on a review of record evidence in the instant proceeding, we preliminarily find, consistent with our past determinations, that benefits under these three laws are specific within the meaning of section 771(5A) of the Act and, thus, confer countervailable subsidies. Contrary to Corticella/Combattenti's claims, no party in this proceeding has provided sufficient information with regard to laws 407/90 and 223/91 which would warrant reconsideration of our past determinations that these laws are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. As for law 337/90, record information also shows that this law is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because the higher levels of benefits were limited to companies in the Mezzogiorno and to handicraft enterprises.

In accordance with 19 CFR 351.524(c) and consistent with our methodology in the *Pasta Investigation* and in subsequent reviews of this order, we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy, we divided Corticella/Combattenti's savings in social security contributions during the POR by the companies' total sales in the POR.

On this basis, we preliminarily determine the countevailable subsidy from the *sgravi* program to be 0.01 percent *ad valorem* for Corticella/Combattenti.

I. Law 908/55

The GOI created the Fondo di Rotzaione Iniziative Economiche (Rotational Fund for Economic Initiatives) (''FRIE'') through Law 908 of October 18, 1955 in order to promote economic initiatives within the territory of Trieste and the province of Gorizia in the Friuli-Venezia Giulia region. The fund provides reduced-interest loans for the construction, re-activation, transformation, modernization, improvement, and industrial development of industrial plants and handicraft companies in the above-noted areas. Companies who receive long-term, variable rate loans under this program receive an interest rate equal to 50 percent of the 6-month Euro Interbank Offered Rate.

Pasta Zara 2 was the only respondent in this proceeding who reported having outstanding Law 908/55 loans during the POR. Specifically, Pasta Zara 2 had two long-term, variable rate FRIE loans that were outstanding during the POR whose loan terms were established in 1999 and 2001.

We preliminarily find that these loans are a direct transfer of funds from the GOI within the meaning of section 771(5)(D)(i) of the Act. Also, the loans are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. Finally, we preliminarily determine that a benefit exists pursuant to section 771(5)(E)(ii) of the Act. According to 19 CFR 351.505(a)(5), in order to determine whether long-term variable interest rate loans confer a benefit, the Department first compares the benchmark interest rate to the rate on the government-provided loan for the year in which the government loan terms were established. According to 19 CFR 351.505(a)(5)(i), if the comparison shows that the origination-year interest rate on the government-provided loan was lower than the for the origination-year interest rate on the benchmark loan, the Department will examine that loan in the POR to measure the benefit. Based on a comparison of the origination year interests rates of the 908/55 loans and the benchmark loans, we found that the government loan rates were lower than the benchmark rates in both instances. Thus, we preliminarily find that a benefit was conferred through these loans within the meaning of section 771(5)(E)(ii) of the Act as described in 19 CFR 351.505(a)(5) and that these loans constitute coutervailable subsidies pursuant to section 771(5) of the Act.

In accordance with 19 CFR 351.505(c)(4), we calculated the benefit for the POR by computing the difference between the payments Pasta Zara 2 made on their Law 908/55 loans during the POR and the payments Pasta Zara 2 would have made on the benchmark loan. We then divided the benefit received by the companies' total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 908/55 loans to be 2.74 percent *ad valorem* for Pasta Zara/Pasta Zara 2.

II. Program Preliminarily Determined To Be Not Countervailable

European Economic Commission (''ECC'') Decision 94/217

Under EEC Decision 94/217, SMEs could receive onetime interest contributions on European Investment Bank (''EIB'') loans for investments that led to the creation of new jobs. The program was intended to provide assistance to SMEs in the EC by lowering the interest rates on EIB loans for these companies. The loans under this program were limited to ECU 30,000 times the number of jobs created, and interest contribution payments were in total limited to ten percent of the size of the loan (equal to two percent per year on the five-year loans that were required under this program). In order

to receive the interest contributions, companies were required to submit a certification relating to the creation of jobs, and the financial institutions acting as intermediaries were required to certify that the loans had been made and were in repayment. Once these certifications were received, the EIB agent institution would forward the EIB interest contribution to the beneficiary via its financial intermediary. The application deadline for applying for benefits under this program was December 15, 1995, and all payments under this program were finalized by the end of 1997.

Pasta Zara is the only respondent in this proceeding that reported receiving interest contributions under EEC Decision 94/217.

According to record information, any SME in the EC was eligible to apply for loans under these programs and to receive the associated interest contributions. The interest contributions were not export subsidies or import substitution subsidies according to sections 771(5A)(A) and (B) of the Act. Nor were the interest contributions specific according to the criteria stipulated in sections 771(5A)(D)(i), (ii), or (iv) of the Act. Finally, according to record information, thousands of SMEs within the EC received benefits under this program in many different industries. According to data on the sectoral distribution of benefits under this program, the metal working and mechanical engineering industries (20.6 percent) and the private and public sector services industries (11.3 percent) received the most benefits under this program, with the foodstuffs industry (which would include the pasta industry) ranked third with 8.9 percent of the benefits and the rubber and plastic processing industry ranked fourth with 6.6 percent of the benefits. Based on this information, we preliminary find that the pasta industry was not a predominant user of this program and did not receive a disproportionately large amount of the benefits under this program. Thus, the program is not *de facto* specific according to section 771(5A)(D)(iii) of the Act. Based on the above analysis, we find that this program is not specific as defined in section 771(5A) of the Act, and thus, not countervailable.

111. Programs Preliminarily Determined to Not Confer Subsidies During the POR

A. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote development in the Mezzogiorno. Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution, chosen by the applicant, made a positive assessment of the project. (As noted above, loans were also provided under Law 64/86.) In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (*see* above). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to continue receiving grants under Law 64/86 after 1993.

Russo/Di Nola is the only respondent in this proceeding that reported receiving grants under Law 64/86 which could potentially confer a benefit during the POR. Specifically, Cicciano received a grant under this program in 1998 for the general modernization and technical reorganization of the Cicciano plant used in the production of cookies, pasta, and flour.

In past reviews in this proceeding, we found grants made through this program to be countervailable. *See, e.g., Pasta Investigation.* However, the grant under this program was received by Cicciano prior to its purchase by Di Nola in December 2001. Thus, as discussed above in the ''Changes In Ownership'' section, we preliminarily find that any pre-sale subsidies received by Cicciano as part of this program are extinguished in their entirety and, therefore, provide no countervailable benefit to Russo/Di Nola during the POR.

B. Brescia Chamber of Commerce Training Grants

The Chamber of Commerce of Brescia provided training grants during 2002 and 2003 to companies in the province of Brescia for the professional training of entrepreneurs, directors, and employees. The goal of these grants was to improve economic, social, and productive development in the province.

Lensi was the only respondent in this proceeding that reported receiving grants under this program during the POR.

In situations where any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability, it may not be necessary to determine whether benefits conferred under these programs to the subject merchandise are ocuntervailable. (*See, e.g. Live Cattle From Canada; Final Negative Countervailing Duty Determination,* 64 FR 57040, 57055 (October 22, 1999) (''*Cattle from Canada*'').) In this instance, any benefit to the subject merchandise resulting from this grant would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability. Thus, consistent with our past practice, we do not consider it necessary to determine whether benefits conferred thereunder to the subject merchandise are countervailable.

C. Law 317/91 Benefits for Innovative Investments

Law 317/91 allows for a capital contribution or a tax credit up to a maximum amount of Euro 232,405.60 to small and medium-sized industrial, commercial, and service companies for innovative investments. Pasta Zara has stated that it received tax benefits under this law in 1994 but that no benefits were received in the POR. No other respondent reporting receiving POR benefits from this program.

Pursuant to 19 CFR 351.524(c)(1), the Department normally considers tax programs to provide recurring benefits. Because neither Pasta Zara nor its affiliates received tax benefits under Law 317/91 during the POR, we preliminarily determine that this program did not confer a countervailable subsidy in the POR.

D. Tremonti Law 489/94 (Formerly Law Decree 357/94)

Tremonti Law 489/94 allowed for a deduction from taxable income of 50 percent of the difference between investments in new plant and equipment compared to the average investment rate for the preceding five years. Pasta Zara has stated that one of its affiliates received tax benefits under this law in 1995 but that no benefits were received in the POR. No other respondent reporting receiving POR benefits from this program.

Pursuant to 19 CFR 351.524(c)(1), the Department normally considers tax programs to provide recurring benefits. Because neither Pasta Zara nor its affiliates received tax benefits under Law 489/94 during the POR, we preliminarily determine that this program did not confer a countervailable subsidy in the POR.

E. Ministerial Decree 87/02

Ministerial Decree Number 87 (February 25, 2002), in accordance with Law 193 of June 22, 2000, allows companies that hire or have training programs for prisoners to benefit from a monthly tax credit amounting to 516.46 Euros for every prisoner recruited. Pasta

Zara was the only respondent in this proceeding that reported receiving tax credits under this program during the POR.

In situations where any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability, it may not be necessary to determine whether benefits conferred under these programs to the subject merchandise are countervailable. (*See, e.g., Cattle from Canada.*) In this instance, any benefit to the subject merchandise resulting from this grant would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability. Thus, consistent with our past practice, we do not consider it necessary to determine whether benefits conferred thereunder to the subject merchandise are countervailable.

Law 10/91 Grants to Fund Energy Conservation

Under Law 10/91, the GOI provides funds for the development of energy-conserving technology. Law 10/91 authorized grants based on applications submitted in 1991 and 1992. Pasta Zara was the only respondent that reported receiving benefits under this program. Specifically, Pasta Zara reported that it received a grant through this program in 1993 in order to purchase new boilers for its facility.

Pursuant to 19 CFR 351.524(b)(2), the Department will normally expense non-recurring benefits provided under a particular subsidy program to the year in which benefits are received if the total amount approved under the program is less than 0.5 percent of relevant sales during the year in which the subsidy was approved. Because the amount of the energy savings grant approved by the GOI for Pasta Zara under this program was less than 0.5 percent of Pasta Zara's sales in the year in which the grant was approved, this grant would be expensed prior to the POR in accordance with 19 CFR 351.524(b)(2). Thus, no countervailable benefit was provided to Pasta Zara/Pasta Zara 2 during the POR under this program.

IV. Programs Preliminarily Determine Not To Have Been Used During the POR

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs. during the POR:

A. *Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95)*
B. *Regional Tax Exemptions Under IRAP*
C. *Corporate Income Tax (IRPEG) Exemptions*
D. *Export Restitution Payments*
F. *Export Credits Under Law 227/77*
G. *Capital Grants Under Law 675/77*
H. *Retraining Grants Under Law 675/77*
I. *Interest Contributions on Bank Loans Under Law 675/77*
J. *Interest Grants Financed by IRI Bonds*
K. *Preferential Financing for Export Promotion Under Law 394/81*
L. *Urban Redevelopment Under Law 181*
M. *Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)*
N. *Industrial Development Grants under Law 183/76*
O. *Interest Subsidiaries Under Law 598/94*
P. *Duty-Free Import Rights*
Q. *Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77*
R. *European Social Fund Grants*
S. *Law 113/86 Training Grants*
T. *European Agricultural Guidance and Guarantee Fund*

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter covered by this administrative review. For the period January 1, 2002 through December 31, 2002, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below.

Producer/exporter	Net subsidy rate
Pastificio Fratelli Pagani S.p.A.	0.06 percent (*de minimis*)
Pastificio Corticella S.p.A./Pastificio Combattenti S.p.A.	0.10 percent (*de minimis*)
Pasta Zara S.p.A./ Pasta Zara 2 S.p.A/ Societa per Azioni Pasta Giulia S.p.A.	2.76 percent
Pasta Lensi S.r.l	0.00 percent (*de minimis*)
Pastificio Carmine Russo S.p.A./ Pastificio Di Nola S.p.A.	0.16 percent (*de minimis*)

The calculations will be disclosed to the interested parties in accordance with 19 CFR 351.224(b).

If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties at these net subsidy rates. The Department will issue appropriate instructions directly to Customs within 15 days of publication of the final results of this review. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at these rates on the f.o.b. value of all shipments of the subject merchandise from the producers/exporters under review that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For all other companies that were not reviewed (except Barilla G. e R.F.lli S.p.A. and Gruppo Agricoltura Sana S.r.L., which are excluded from the order), the Department has directed Customs to assess countervailing duties on all entries between January 1, 2002 and December 31, 2002 at the rates in effect at the time of entry.

For all non-reviewed firms, we will instruct Customs to collect cash deposits of estimated countervailing duties at the most recent company-specific or all others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

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

Dated: July 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–17419 Filed 7–29–04; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textiles Produced or Manufactured in the People's Republic of China

July 27, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting a limit.

EFFECTIVE DATE: August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.cbp.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Group III is being increased as a special adjustment to allow for shipment of leno mesh fabric (in Category 220).

Also, visa and ELVIS requirements for Category 220 are being changed. Effective for goods exported on and after August 2, 2004, leno mesh fabric in Harmonized Tariff Schedule of the United States (HTSUS) number 5803.90.3000 will require a ''220–L'' visa and ELVIS transmission, and the rest of Category 220 will continue to require a ''220'' visa and ELVIS transmission.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 69 FR 4926, published on January 28, 2004). *Also see* 68 FR 65445, published on November 20, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

July 27, 2004.

Committee for the Implementation of Textile Agreements

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on August 2, 2004, you are directed to increase the limit for Group III, to the level indicated below:

Category	Twelve-month limit [1]
Group III: 201, 220, 224–V [2], 224–O [3], 225, 227, 369–O [4], 400, 414, 469pt. [5], 603, 604–O [6], 618–620 and 624–629, as a group.	76,107,974 square meters equivalent.

[1] The limit has not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0805, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[6] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

In addition, effective on August 2, 2004, for goods exported on and after this date, leno mesh fabric in HTSUS number 5803.90.3000 produced or manufactured in China, will require a category ''220–L'' visa and ELVIS transmission, and the rest of Category 220 will continue to require a ''220'' visa and ELVIS transmission.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–17365 Filed 7–29–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Munitions System Reliability will meet in closed session on August 19–20, 2004, at Picatinney Arsenal, New Jersey. This Task Force will review the efforts thus far to improve the reliability of munitions systems and identify additional steps to be taken to reduce the amount of unexploded ordnance resulting from munitions failures. The Task Force will: Conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review

ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by section 10(a)(2) of the Federal Advisory Committee Act and subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to the meeting.

Dated: July 23, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–17415 Filed 7–29–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Global Positioning System will meet in closed session on August 30, 2004, and September 13, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will review a range of issues dealing with Galileo (or some other future radio navigation satellite system) and provide recommendations to address these issues.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will address: Provision of capabilities and services within GPS to ensure its viability in commercial markets; the impact on frequency spectrum use, signal waveforms and power management; access and denial issues throughout the spectrum of conflict; possible alternatives to a global radio navigation system including the development of small compact timing devices and/or navigation units; and vulnerabilities and upgrade strategies for all global radio navigation satellite systems (GRNSS). In addition, the Task Force will assess areas in which DoD should seek strong partnering relationships outside DoD, both within government and industry. It will recommend research and development areas that are uniquely in DoD interest and might not be accomplished by the private sector.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: July 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–17416 Filed 7–29–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 28, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to, Military Surface Deployment and Distribution Command, Carrier Services Branch, 661 Sheppard Place, Fort Eustis, Virginia 23604–1644, or by e-mail to *mayoa@sddc.army.mil*. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 325–8433.

Title, Associated Form, and OMB Number: Freight Carrier Registration Program (FCRP); SD Form 410, OMB Control Number (TBD).

Needs and Uses: The FCRP is designed to protect the interest of the Government and to ensure that the Department of Defense deals with responsible carriers having the capability to provide quality and dependable service. Information is vital in determining capability to perform quality service transporting DOD freight. Carriers will furnish SDDC with information to assist in determining through other public records whether the company and its officers are responsible contractors.

Affected Public: Business or other For-Profit.

Annual Burden Hours: 108.

Number of Respondents: 430.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Freight Carrier Registration Program

will be a minimum burden to the carrier industry. The information SDDC collects can now be accessed through the DOD Web site. That will expedite the time to approve the carrier to do business with the DOD.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–17363 Filed 7–29–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Integrated Project Implementation Report/ Environmental Impact Statement (PIR/ EIS) for the Broward County Water Preserve Areas in South Florida, as Part of the Comprehensive Everglades Restoration Plan (CERP)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement (DEIS) for the Broward County Water Preserve Areas Project, in South Florida. This includes the C–11 Impoundment, C–9 Impoundment, and Water Conservation Area (WCA) 3A and 3B Levee Seepage Management Areas. The study is a cooperative effort between the U.S. Army Corps of Engineers (USACE) and the South Florida Water Management District (SFWMD).

DATES: Public meetings will be held over the course of the study; the exact location, dates, and times will be announced in public notices and local newspapers.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Tarr, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, by e-mail, *bradley.a.tarr@saj02.usace.army.mil*, or by telephone at 904–232–3582.

SUPPLEMENTARY INFORMATION:

a. *Authorization:* The Broward County Water Preserve Areas (Broward County WPA) project in South Florida was authorized by the Water Resources Development Act (WRDA) of 2000. Prior to the current project, a Water Preserve Areas Feasibility Study led to a publication of the Draft Feasibility Report and Supplemental Environmental Impact Statement, October 2001. The document and project were never finalized because additional information was required to comply with the requirements of WRDA 2000, which brought about the Broward County WPA project.

b. *Project Scope:* The primary goal of the Broward County WPA is to provide a hydrologic buffer between the Everglades and developed lands, and to assist in meeting the future water needs of all users (agriculture and urban) and the environment by supplying additional regional storage. Specific objectives include reducing demands on the Everglades and Lake Okeechobee for water supply; reducing seepage losses from the Everglades by holding more water in the natural system; improving natural hydropatterns within existing natural areas; capturing, storing, and treating stormwater currently lost to tide; and eliminating discharge of polluted water into the Everglades Protection Area.

The Broward County WPA project includes buffer marsh areas, canals, levees, water control structures and above-ground impoundments with a total storage capacity of approximately 6,000 acre-feet located in the western C–11 Canal basin and 6,600 acre-feet located in the western C–9 Canal basin in western Broward County. This multi-purpose separable element is designed to direct runoff events from the western C–11 drainage basin into the C–11 impoundment instead of pumping the untreated runoff into WCA–3A through the S–9 pump station. The purpose of the C–9 Impoundment features are to pump storm events from the western C–9 drainage basin into the impoundment along with runoff transferred from the western C–11 basin. The impoundment pools will assist in reducing seepage from adjacent natural areas WCA–3A/3B, WCA–3A/3B Seepage Management areas, providing groundwater recharge, meeting the urban area water demands, and preventing saltwater intrusion in the surficial aquifer. Another function of this separable element is the ability to reduce seepage from WCA–3A to improve hydropatterns within the WCA by allowing higher water levels in the borrow canals and maintaining longer duration inundation within the marsh areas that are located east of the WCA and west of US Highway 27. This component also will attenuate high stages in WCA–2B and divert this excess water to Northeast Shark River Slough via C–500 if there are unmet demands or for storage in the future Central Lake Belt Storage Area.

Modeling has already been conducted for the Comprehensive Review Study (Restudy) and the draft WPA Feasibility Study. The primary hydrologic model was the South Florida Water Management Model (SFWMM), version 3.5, and was used to evaluate responses to proposed structural and operational modifications to the water management system in South Florida during the Comprehensive Review Study. An evaluation of system-wide effects based upon modeling results was made relative to both the current (1995) and future (2050) base conditions and performed during the WPA Feasibility Study.

c. *Preliminary Alternatives:* The Restudy alternative for the Western C–11 Impoundment consists of a 1,600 ac. impoundment 4 ft. deep with appurtenant structures (providing 6,400 ac. ft. of storage volume). The Restudy alternative for WCA 3A/3B Levee Seepage Management consists of seepage levees (18 lineal miles in initial MCACES estimate) and water control structures. The Restudy alternative for the C–9 Impoundment consists of a 2,500 ac. impoundment at 4 ft. depth and appurtenant structures (providing 10,000 ac. ft. of storage volume). The initial (1999) cost estimate for these three components was $314,318,000. This alternative plan (providing 16,400 ac. ft. of impoundment storage volume plus seepage management) will be included in the evaluation.

d. *Issues:* The PIR/EIS will consider impacts on health and safety, aesthetics and recreation, cultural resources, socio-economic resources, hydrology, water quality, ecosystem habitat, fish and wildlife resources, threatened and endangered species, water availability, flood protection, and other impacts identified through scoping, public involvement, and interagency coordination.

e. *Scoping:* A scoping letter and public workshops will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

f. *Public Involvement:* Public meetings will be held over the course of the study; the exact location, dates, and times will be announced in public notices and local newspapers.

g. *Coordination:* The proposed action is in accordance with the Fish and Wildlife Coordination Act (FWCA) of 1958 and the Endangered Species Act (ESA) of 1973. The coordinating agencies include the U.S. Fish and Wildlife Service (FWS) and the South Florida Water Management District (SFWMD).

h. *Other Environmental Review and Consultation:* The proposed action would involve evaluation for

compliance with guidelines pursuant to Section 404(b) of the Clean Water Act.

i. *Agency Role:* As cooperating agency, non-Federal sponsor, and leading local expert, SFWMD will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

j. *DEIS Preparation:* The integrated draft Project Implementation Report (PIR), including a DEIS, is currently estimated for publication in November 2005.

Dated: July 22, 2004.

James C. Duck,

Chief, Planning Division.

[FR Doc. 04–17364 Filed 7–29–04; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 28, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2004.

Leo J. Eiden,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan Program Repayment Plan Selection Form.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 971,000.

Burden Hours: 320,430.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to select a repayment plan for their loans.

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 2598. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–17342 Filed 7–29–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 28, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including

through the use of information technology.

Dated: July 26, 2004.

Leo J. Eiden,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Loan Discharge Application: Unpaid Refund.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 400.

Burden Hours: 200.

Abstract: If a school fails to make a required refund of a Federal Family Education Loan Program or William D. Ford Federal Direct Loan Program loan, a borrower uses this form to apply for a discharge of the portion of the loan that was not refunded.

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 2597. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–17343 Filed 7–29–04; 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. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 19, 2004 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

5:30 p.m. Informal Discussion
6 p.m. Call to Order; Introductions; Review Agenda; Approval of July Minutes
6:05 p.m. DDFO's Comments
6:25 p.m. Federal Coordinator Comments
6:30 p.m. Ex-Officio Comments
6:35 p.m. Public Comments and Questions
6:45 p.m. Task Forces/Presentations
- Waste Disposition
- Water Quality
—Surface Water Operable Unit
- Long Range Strategy/Stewardship
—Operating Procedures and Bylaws
- Community Outreach
—Community Survey

7:45 p.m. Public Comments and Questions
8 p.m. Break
8:15 p.m. Administrative Issues
- Review of Workplan
- Review of Next Agenda

8:35 p.m. Review of Action Items
8:50 p.m. Subcommittee Reports
- Executive Committee

9:15 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 below 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 comments 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 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 a.m. and 5 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 July 27, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–17361 Filed 7–29–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy; State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: August 12, 2004 from 8:30 a.m. to 5 p.m., and August 13, 2004 from 8:30 a.m. to 2 p.m.

ADDRESSES: Doubletree Hotel Lloyd Center, 1000 NE Multnomah, Portland, OR, 97232.

FOR FURTHER INFORMATION CONTACT: Gary Burch, Office of Technology Development, Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–0081.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub.L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- EERE Programmatic Update
- Discussion and Tour of Bonneville Power
- Technology Deployment Strategy Update

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 27, 2004.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–17360 Filed 7–29–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–923–000 and ER04–923–001]

Allied Energy Resources Corporation; Notice of Issuance of Order

July 26, 2004.

Allied Energy Resources Corporation (AERC) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of capacity and energy at market-based rates. AERC also requested waiver of various Commission regulations. In particular, AERC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by AERC.

On July 21, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by AERC should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, is August 20, 2004.

Absent a request to be heard in opposition by the deadline above, AERC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of AERC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of AERC's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1685 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–831–000 and ER04–831–001]

Calpine Newark, LLC; Notice of Issuance of Order

July 26, 2004.

Calpine Newark, LLC (Calpine Newark) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of capacity, energy, and ancillary services at market-based rates. Calpine Newark also requested waiver of various Commission regulations. In particular, Calpine Newark requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Calpine Newark.

On July 21, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Calpine Newark should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, is August 20, 2004.

Absent a request to be heard in opposition by the deadline above, Calpine Newark is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Calpine Newark, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Calpine Newark's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC

20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1682 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–913–000]

Centaurus Energy Master Fund, L.P.; Notice of Issuance of Order

July 26, 2004.

Centaurus Energy Master Fund, L.P. (Centaurus) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity and energy at market-based rates. Centaurus also requested waiver of various Commission regulations. In particular, Centaurus requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Centaurus.

On July 20, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Centaurus should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, is August 19, 2004.

Absent a request to be heard in opposition by the deadline above, Centaurus is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Centaurus, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Centaurus' issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1684 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–017]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Tariff Filing

July 22, 2004.

Take notice that on July 20, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 10A, to be effective August 1, 2004.

MRT states that this tariff sheet reflects the termination of Original Sheet No. 10A and reserves First Revised Sheet 10A for future use.

MRT states that copies of the filing has been mailed to each of MRT's customers and interested state commission.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1696 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–126]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

July 21, 2004.

Take notice that on July 15, 2004, CenterPoint Energy Gas Transmission Company (CEGT) filed the additional information required by the Commission's July 7, 2004, order in this docket.

CEGT states that copies of its filing are being mailed to all parties on the service list in this docket.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in

accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1681 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–058]

Columbia Gas Transmission Corporation; Notice of Refund Report

July 26, 2004.

Take notice that on July 20, 2004, Columbia Gas Transmission Corporation (Columbia) filed to report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia's Docket No. RP95–408 settlement period.

Columbia states that it allocated such recoveries among customers based on terms of the Docket No. RP95–408 Phase II Settlement which states that customer allocations shall be based on customers' actual contributions to Remediation Program collections for the most recent February 1–January 31 period.

Columbia states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all State commissions whose jurisdiction includes the location of any such recipient.

Columbia states that copies of its filing are being provided to all customers recipients of the environmental insurance recoveries and all State commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on August 2, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1692 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-160-032]

Columbia Gulf Transmission Company; Notice of Refund

July 26, 2004.

Take notice that on July 20, 2004, Columbia Gulf Transmission Company (Columbia Gulf) filed a report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gulf's Docket No. RP91–160 settlement period.

Columbia Gulf states that it allocated such recoveries among customers based on their fixed cost responsibility for services rendered on the Columbia Gulf system during the period December 1, 1991, through October 31, 1994, the period of the Docket No. RP91–160 settlement).

Columbia Gulf states that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ≥eFiling≥ link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on August 2, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1691 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–41–000]

East Texas Electric Cooperative, Inc.; Notice Of Application

July 22, 2004.

Take notice that on July 16, 2004, East Texas Electric Cooperative, Inc. (ETEC) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to: (1) Enter into a secured loan in an amount not to exceed $80 million with the National Rural Utilities Cooperative Finance Corporation (CFC): and (2) enter into a second secured loan in an amount not to exceed $11 million with the CFC.

ETEC also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 4, 2004

Magalie R. Salas,

Secretary.

[FR Doc. E4–1695 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–64–004]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

July 22, 2004.

Take notice that on July 19, 2004, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Attachment 1 to the filing, to become effective August 19, 2004.

Gulf South states that this compliance filing includes those tariff sheets necessary to reflect the requirements of the Commission's May 5th Order on Rehearing.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1697 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–9–004]

GulfTerra Texas Pipeline, LP; Notice Of Compliance Filing

July 26, 2004.

Take notice that on July 12, 2004, GulfTerra Texas Pipeline, LP filed a recalculation of its rates and refund report in compliance with orders issued on June 11, 2002, and February 25, 2004, in Docket Nos. PR00–9–000 and PR00–9–002, respectively.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 pm Eastern Time on August 9, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1687 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–817–000 and ER04–817–001]

Indeck Maine Energy, LLC; Notice of Issuance of Order

July 26, 2004.

Indeck Maine Energy, LLC (Indeck Maine) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity, energy, and ancillary services at market-based rates. Indeck Maine also requested waiver of various Commission regulations. In particular, Indeck Maine requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Indeck Maine.

On July 22, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Indeck Maine should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, is August 23, 2004.

Absent a request to be heard in opposition by the deadline above, Indeck Maine is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Indeck Maine, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Indeck Maine's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1693 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–012]

Iroquois Gas Transmission System, L.P.; Notice Of Negotiated Rate

July 22, 2004.

Take notice that on July 19, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet Nos. 6B and 6C, proposed to become effective July 19, 2004.

Iroquois states that the revised tariff sheets reflect a negotiated rate between Iroquois and Consolidated Edison Company of New York, Inc. for transportation under Rate Schedule RTS beginning July 19, 2004, through February 1, 2013.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1694 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–925–000]

Notice of Issuance of Order; Merrill Lynch Commodities, Inc.

July 26, 2004.

Merrill Lynch Commodities, Inc. (MLCI) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity, energy, and ancillary services at market-based rates. MLCI also requested waiver of various Commission regulations. In particular, MLCI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MLCI.

On July 20, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the

request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MLCI should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests is August 19, 2004.

Absent a request to be heard in opposition by the deadline above, MLCI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of MLCI, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MLCI's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1686 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–405–000]

Northern Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

July 22, 2004.

Take notice that on July 20, 2004, Northern Natural Gas Company (Northern), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, with an effective date of August 19, 2004:

Ninth Revised Sheet No. 259
Fourth Revised Sheet No. 292A

Northern states that it is filing the above-referenced tariff sheets to provide establishment of non-telemetered Operational Zone delivery points in Northern's Market Area.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1698 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–688–000; ER04–689–000; ER04–690–000; and ER04–693–000]

Pacific Gas and Electric Company; Notice of Technical Conference

July 22, 2004.

Parties are invited to attend a technical conference in the above-referenced Pacific Gas and Electric Company (PG&E) proceedings on July 28–29, 2004, at Commission Headquarters, 888 First Street, NE., Washington, DC 20426. The technical conference will be held in Conference Room 3M2–A/B on both days. The July 28th technical conference will be held from 9 a.m. until 5 p.m. (e.s.t.). The July 29th technical conference will be held from 9 a.m. until 3 p.m. (e.s.t.). Arrangements have been made for parties to listen to the technical conference by telephone.

The purpose of the conference is to identify the issues raised in these proceedings, develop information for use by Commission staff in preparing an order on the merits, and to facilitate any possible settlements in these proceedings. The parties will discuss, among other things, the following issues related to the unexecuted agreements filed by PG&E in the above-referenced dockets: (1) The Parallel Operation Agreement between PG&E and Western Area Power Administration (WAPA) (PG&E Original Rate Schedule FERC No. 228), (2) the Interconnection Agreement, (3) the Wholesale Distribution Tariff Service Agreement and (4) related issues to these Agreements.

Questions about the conference and the telephone conference call arrangements should be directed to: Julia A. Lake, Office of the General Counsel—Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, (202) 502–8370, *Julia.lake@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1699 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–379–000; CP04–380–000; and CP04–381–000]

Pine Prairie Energy Center, LLP; Notice of Application

July 23, 2004.

On July 16, 2004, Pine Prairie Energy Center, LLP (Pine Prairie), an affiliate of Sempra Energy, 12 Avery Place, Westport, CT, 06880 filed an application in Docket No. CP04–379–000, pursuant to section 7(c) of the Natural Gas Act (NGA) to construct, install, own, operate, and maintain a new high-deliverability, salt-dome storage facility and interconnecting pipelines, located in Evangeline Parish Louisiana. Pine Prairie also requests blanket certificates under parts 157 and 284 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations (Docket Nos. CP04–381–000 and CP04–380–000 respectively) and for authorization to provide open-access firm and interruptible natural gas storage services at market based rates. Pine Prairie's storage project will provide a total storage capacity of 24 Bcf of natural gas and a deliverability of 2.4 Bcf/day.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659. Questions concerning this Application may be directed to James F. Bowe, Jr., Dewey Ballantine LLP, 1775 Pennsylvania Avenue, NW., Washington, DC 20006–4605, 202–429–1444 (phone)/202–429–1579 (fax).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

Comment Date: August 18, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1679 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–409–000]

Pogo Producing Company; Notice of Application for Emergency Allocation of OCS Pipeline Capacity Under Section 5(E) of the OCSLA

July 23, 2004.

Take notice that on July 23, 2004, Pogo Producing Company (Pogo) filed an Application for Emergency Relief pursuant to Section 5(e) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1334(e), requesting an emergency order allocating pipeline capacity on Southern Natural Gas Company (Southern) upstream of the Toca, Louisiana processing plant (Toca Plant) to avoid unnecessary curtailment or shut-in of OCS oil and gas production connected into Southern's facilities beginning August 1, 2004 and for so long as the maintenance shut-down of the Toca No. 1 processing unit (Toca 1 Unit) continues, expected to be two to four weeks.

In the Application, Pogo states that because of reduced processing capability at the Toca plant operated by Enterprise Operating Partners, LLC, during the period of maintenance shut-down, Southern has notified all shippers that it intends to institute a 25 degree hydrocarbon dewpoint (HDP) limit under its FERC Gas Tariff at the Enterprise, Mississippi Monitoring Point. Such a limitation will require curtailments of oil and gas production on the Outer Continental Shelf (OCS) upstream of the Toca Plant. Pogo requests an emergency allocation of pipeline receipt point capacity upstream of the Toca Plant that will maximize OCS oil and gas production during the period of the Toca Unit 1 shut-down. Specifically, Pogo requests that the Commission, in consultation with the Secretary of Energy, enter an order directing Southern to cause gas supplies that enter Southern's system at the OCS interconnects with the Viosca Knoll Gathering System and Mississippi Canyon Pipeline Company to be diverted by setting the flow rate at those two pipeline interconnects at zero during the period of the Toca 1 Unit shut-down.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Because of the emergency nature of the relief requested, all such motions or protests must be filed on or before Tuesday, July 27, 2004. 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 notice of intervention or motion to intervene, as appropriate. Motions to intervene and protests must be served on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on July 27, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1677 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–879–000]

Sunoco Power Generation LLC; Notice of Issuance of Order

July 26, 2004.

Sunoco Power Generation LLC (Sunoco Power) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity, energy, and certain ancillary service to wholesale customers at market-based rates. Sunoco Power also requested waiver of various Commission regulations. In particular, Sunoco Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Sunoco Power.

On July 16, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Sunoco Power should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, is August 16, 2004.

Absent a request to be heard in opposition by the deadline above, Sunoco Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Sunoco Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Sunoco Power's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1683 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP04–233–003]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

July 26, 2004.

Take notice that, on July 20, 2004, Tennessee Gas Pipeline Company, (Tennessee) submitted a compliance filing pursuant to the Commission's order, issued July 13, 2004, in the referenced proceedings.

Tennessee states that it tendered for filing Substitute Second Revised Sheet No. 339C to be effective May 1, 2004, to clarify that notice of termination may be given to both the releasing shipper and replacement shipper concurrently.

Tennessee states that copies of its filing have been sent to all customers and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1688 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–406–000]

Texas Gas Transmission, LLC; Notice of Proposed Changes In FERC Gas Tariff

July 26, 2004.

Take notice that on July 21, 2004, Texas Gas Transmission, LLC tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, and the following tariff sheets, to become effective August 1, 2004:

Sheet No. 35
Second Revised Sheet No. 36
Second Revised Sheet No. 240

Texas Gas states that the proposed changes will reduce Texas Gas' effective fuel recovery percentages and eliminate its monthly imbalance fee, effective August 1, 2004.

Texas Gas states the purpose of this filing is the removal of the Monthly Imbalance Fee and Cash-Out Adjustment Percentage (CAP) that were approved in the Commission's ''Order Accepting Offer of Settlement and Severing Parties'' (98 FERC ¶61,244 (2002)) in Docket No.RP00–260. Texas Gas states that in the Order, Texas Gas was authorized, among other things, to implement for two years two special provisions related to cash-out under-recoveries through January 31, 2001. Texas Gas indicates that it was permitted to recover in-kind up to 1,932,525 MMBtu of gas through a fuel surcharge mechanism (a CAP of 0.14%) and to collect a $0.25 per MMBtu monthly imbalance fee over an approved two-year period and that period will expire on July 31, 2004. Texas Gas notes that this filing eliminates the CAP fuel surcharge and the monthly imbalance fee at the end of that two-year period.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1689 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–407–000]

Transcontinental Gas Pipe Line Corporation; Notice Of Proposed Changes In FERC Gas Tariff

July 26, 2004.

Take notice that on July 21, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective September 11, 2004.

First Revised Sheet No. 256A
Eighth Revised Sheet No. 257

Transco states that the purpose of the instant filing is to modify Transco's billing provisions set forth in Section 6 of the General Terms and Conditions of its tariff to provide that Transco will render its bills electronically, unless a customer elects in writing to have bills rendered via U.S. mail. Transco also states that the ability to render bills exclusively by electronic means to those customers that do not elect to receive U.S. mail delivery will eliminate the current duplication of providing both paper and electronic copies of bills, and will result in a more administratively efficient process for Transco and its customers.

Transco states that copies of the filing are being served to its affected customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1690 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC04–68–000, et al.]

East Texas Electric Cooperative, Inc., et al.; Electric Rate and Corporate Filings

July 21, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. East Texas Electric Cooperative, Inc.

[Docket No. AC04–68–000]

Take notice that on June 28, 2004, East Texas Electric Cooperative, Inc. (ETEC) tendered for filing copies of the accounting entries for the transfer of certain facilities from Entergy Power Ventures, L.P. and Warren Power, LLC to ETEC in compliance with the Commission's Order dated May 28, 2004, in Docket No. EC04–66–000.

Comment Date: 5 p.m. eastern time on August 11, 2004.

2. Cadillac Renewable Energy LLC and Primary Power Management and Development, Inc. d/b/a Primary Power International

[Docket Nos. EC04–132–000 and ER98–4515–002]

Take notice that on July 19, 2004, Cadillac Renewable Energy LLC (CRE) and Primary Power Management and Development, Inc. d/b/a Primary Power International (PPI) (together, Applicants) filed with the Federal Energy Regulatory Commission an application for authorization under section 203 of the Federal Power Act and notice of change in status with respect to the disposition of jurisdictional assets relating to the transfer of 100 percent of the membership interests in CRE to PPI. Applicants request confidential treatment for (1) the Stock Purchase Agreement between NRG Energy, Inc. and PPI dated January 29, 2004; and (2) the Memorandum of Understanding dated April 22, 2004, between Decker Energy International, Inc. and PPI, each of which is attached as Exhibit I to the Application.

Comment Date: 5 p.m. eastern time on August 9, 2004.

3. Coral Power, L.L.C and Constellation Power Source, Inc.

[Docket Nos. EC04–133–000; ER97–2261–016; and ER96–25–025]

Take notice that on July 19, 2004, Coral Power, L.L.C. (Coral Power) and Constellation Power Source, Inc. (CPS) (collectively, Applicants) filed an application under section 203 of the Federal Power Act requesting Commission authorization for the transfer of a full requirements service agreement with Baltimore Gas and Electric Company from Coral to CPS. Applicants have requested confidential treatment of the contents of Exhibit G and Exhibit I to the section 203 application. Applicants also seek to give a notice of change in status that will result from the proposed transaction.

Comment Date: 5 p.m. eastern time on August 9, 2004.

4. PJM Interconnection, L.L.C.

[Docket Nos. EL03–236–002]

Take notice that on July 16, 2004, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's order in PJM Interconnection, L.L.C., 107 FERC ¶ 61,112 (2004), filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to revise the procedures for suspending offer capping when competitive conditions exist in load pockets. PJM states that it also provided a further justification for its jointly pivotal supplier competitiveness standard.

PJM states that copies of its filing were served upon all persons on the Commission's service list for this proceeding.

Comment Date: 5 p.m. eastern time on August 6, 2004.

5. Exelon Corporation

[Docket No. EL04–120–000]

Take notice that on July 16, 2004, Exelon Corporation (Exelon), on behalf of its subsidiary Commonwealth Edison Company (ComEd) and ComEd's subsidiary Commonwealth Edison Company of Indiana (ComEd of Indiana), filed a petition for declaratory order. The petition seeks a declaration that ComEd of Indiana may pay a dividend of $30 million to ComEd without violating section 305(a) of the Federal Power Act, 16 U.S.C. 825d(a).

Exelon states that a copy of the filing was served upon the Illinois State Commission.

Comment Date: 5 p.m. eastern time on August 6, 2004.

6. GWF Energy LLC

[Docket No. ER01–2233–002]

Take notice that, on July 19, 2004, GWF Energy LLC (GWF) submitted a compliance filing pursuant to the Commission's order issued July 18, 2001, in *GWF Energy LLC*, Docket No. ER01–2233–000 and pursuant to *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003). GWF states that the compliance filing consists of an updated market power analysis and updated tariff sheets.

GWF states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on August 9, 2004.

7. Commonwealth Edison Company

[Docket Nos. ER04–790–001 and ER04–801–001]

Take notice that on July 19, 2004, Commonwealth Edison Company tendered for filing a response to the Commission's deficiency letter issued June 18, 2004, in Docket Nos. ER04–790–000 and ER04–801–000.

Comment Date: 5 p.m. eastern time on August 9, 2004.

8. PJM Interconnection, L.L.C. [Docket Nos. ER04–892–001 and ER04–893–001 (not consolidated)]

Take notice that on July 14, 2004, PJM Interconnection, L.L.C. (PJM) filed an amendment to provide additional information in connection with executed network integration transmission service agreements (NITSA) with the Cities of St. Charles, Illinois (St. Charles) and Batavia, Illinois (Batavia). These agreements were originally filed on May 28, 2004, in Docket Nos. ER04–892–000 and ER04–893–000, respectively.

PJM states that copies of this filing were served upon all persons on the Commission's official service lists for Docket Nos. ER04–892–000 and ER04–893–000.

Comment Date: 5 p.m. eastern time on August 4, 2004.

9. Southern California Edison Company

[Docket No. ER04–1028–000]

Take notice that on June 19, 2004, Southern California Edison Company (SCE) submitted for filing revised rate sheets (Revised Sheets) to the Letter Agreement (Agreement) between SCE and the City of Corona, California (Corona), Service Agreement No. 99 under FERC Electric Tariff, First Revised Volume No. 5. SCE requests an effective date of July 20, 2004.

SCE states that copies of the filing were served upon the Southern California Edison Company's jurisdictional customers, Corona and the Public Utilities Commission of the State of California.

Comment Date: 5 p.m. eastern time on August 9, 2004.

10. NorthWestern Energy

[Docket No. ER04–1029–000]

Take notice that on July 19, 2004, NorthWestern Corporation, doing business as NorthWestern Energy, (NorthWestern Energy) tendered for filing executed amendments to all its Firm Point-to-Point Transmission Service Agreements under NorthWestern Energy's open access transmission tariff. These agreements include Service Agreements with the following eight customers: the City of Miller, South Dakota; the City of Bryant, South Dakota; the City of Langford, South Dakota; the State of South Dakota—South Dakota Human Services Center; the State of South Dakota—Mike Durfee State Prison; the State of South Dakota—South Dakota Developmental Center; the State of South Dakota—Northern State University; and the City of Aberdeen, South Dakota. NorthWestern Energy requests an effective date of January 1, 2004, or March 1, 2004, as specified in the amendment.

NorthWestern Energy states that a copy of this filing has been served on the Cities of Langford, Aberdeen, Bryant Miller, and the State of South Dakota.

Comment Date: 5 p.m. eastern time on August 9, 2004.

11. NorthWestern Energy

[Docket No. ER04–1030–000]

Take notice that on July 19, 2004, NorthWestern Corporation, doing business as NorthWestern Energy, (NorthWestern Energy) tendered for filing an executed electric service agreement emergency-type service between NorthWestern Energy and East River Electric Power Cooperative, Inc. (East River) entered into as of March 3, 2004, to be designated as NorthWestern Energy's Electric Rate Schedule FERC No. 36. NorthWestern requests an effective date of March 3, 2004. NorthWestern Energy states that a copy of this filing has been served on the East River.

Comment Date: 5 p.m. eastern time on August 9, 2004.

12. NorthWestern Energy

[Docket No. ER04–1031–000]

Take notice that on July 19, 2004, NorthWestern Corporation, doing business as NorthWestern Energy (NorthWestern), tendered for filing tariff sheets in compliance with the Commission's Order No. 614 for NorthWestern's currently effective rate schedules and service agreements.

Comment Date: 5 p.m. eastern time on August 9, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 11, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1680 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–134–000, et al.]

Central Vermont Public Service Corporation, et al.; Electric Rate and Corporate Filings

July 23, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Vermont Public Service Corporation and Green Mountain Power Corporation

[Docket No. EC04–134–000]

Take notice that on July 21, 2004, Central Vermont Public Service Corporation (Central Vermont) and Green Mountain Power Corporation (Green Mountain) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization to purchase certain shares of voting Class B Common Stock ($100 par value) issued by the Vermont Electric Power Company, Inc. (VELCO). Applicants state that approval of stock issuance by the Vermont Public Service Board is pending. Central Vermont and Green Mountain request expedited approval to permit the rationalization of ownership of VELCO consistent with usage of the system and to allow VELCO to obtain needed capital for its operations.

Applicant states that copies of the filing were served upon the Vermont Public Service Board and the Vermont Department of Public Service.

Comment Date: 5 p.m. Eastern Time on August 11, 2004.

2. Calumet Energy Team, LLC

[Docket No. ER01–389–001]

Take notice that on July 20, 2004, Calumet Energy Team, LLC (Calumet) tendered for its triennial market-power update and an amendment to its FERC Electric Tariff to include Market Behavior Rules pursuant to the Commission's order issued November 17, 2003, Adopting Market Behavior Rules in Docket Nos. EL01–118–000 and EL01–118–001.

Comment Date: 5 p.m. eastern time on August 10, 2004.

3. Devon Power LLC, Middletown Power LLC, Montville Power LLC, and NRG Power Marketing Inc.

[Docket No. ER03–563–041]

Take notice that on July 21, 2004, Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC (collectively Applicants) submitted a compliance filing pursuant to the Commission's order issued April 1, 2004, in Docket No. ER03–563–029, et al., 108 FERC ¶ 61,002. The Applicants submitted revised Updated Schedules 1 and 2 and Fifth Revised Cost of Service Agreements among each of the Applicants and ISO New England Inc. (ISO–NE).

Applicants state that they have provided copies of this filing to ISO–NE and served each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: 5 p.m. eastern time on August 11, 2004.

4. Puget Sound Energy, Inc.

[Docket No. ER04–761–001]

Take notice that on July 21, 2004, Puget Sound Energy, Inc. (PSE) submitted a compliance filing pursuant to the Commission's order issued June 21, 2004, in Docket No. ER04–761–000, 107 FERC ¶ 61,287. PSE submitted its Open Access Transmission Tariff (OATT), FERC Electric Tariff Seven Revised Volume No. 7, which includes the pro forma Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA) issued by the Commission in Order Nos. 2003 and 2003–A, as amended pursuant to the June 21, 2004, order.

Comment Date: 5 p.m. eastern time on August 11, 2004.

5. Sierra Pacific Power Company; Nevada Power Company

[Docket No. ER04–816–001]

Take notice that, on July 20, 2004, Sierra Pacific Power Company and Nevada Power Company (together, Applicants), submitted First Revised Sheet Nos. 74, 74A, 74B and 74C to Sierra Pacific Resources Operating Companies' FERC Electric Tariff Third Revised Volume No. 1, in compliance with the Commission's order issued July 2, 2004, in Docket No. ER04–816–000,108 FERC ¶ 61,005.

Applicants state that copies of the filing were served on parties on the official service list in Docket No. ER04–816–000.

Comment Date: 5 p.m. eastern time on August 10, 2004.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–1032–000]

Take notice that on July 21, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted Original Service Agreement No. 1399 under its FERC Electric Tariff, Second Revised Volume No. 1, an Interconnection and Operating Agreement among Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., the Midwest ISO and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. Midwest ISO requests an effective date of July 14, 2004. Midwest ISO states that copies of the filing were served upon the Midwest ISO's jurisdictional customers.

Comment Date: 5 p.m. eastern time on August 11, 2004.

7. Wabash Valley Power Association, Inc.

[Docket No. ER04–1033–000]

Take notice that on July 21, 2004, Wabash Valley Power Association, Inc. (Wabash Valley), tendered for filing an amendment to its FERC Electric Tariff, Original Volume No. 1, the Formula Rate Tariff for service to Wabash Valley's 27 member cooperatives. Wabash Valley requests an effective date of July 1, 2004.

Wabash Valley states that copies of this filing were served upon Wabash Valley's Members.

Comment Date: 5 p.m. eastern time on August 11, 2004.

8. Florida Power & Light Company

[Docket No. ER04–1034–000]

Take notice that on July 21, 2004, Florida Power & Light Company (FPL), pursuant to the Commission's orders, Standardization of Generator Interconnection Agreements and Procedures, 104 FERC ¶ 61,103 (2003) (Order No. 2003) and 106 FERC ¶ 61,220 (2004) (Order No. 2003–A), submitted its Open Access Transmission Tariff adding the Commission's standard Large Generator Interconnection Procedures and Agreement, including certain revisions to include FPL's Power Factor requirements and the regional reliability criteria.

Comment Date: 5 p.m. eastern time on August 11, 2004.

9. IDT Energy, Inc.

[Docket No. ER04–1035–000]

Take notice that on July 21, 2004, IDT Energy, Inc. (IDT Energy) petitioned the Commission for acceptance of IDT Energy's FERC Rate Schedule No. 1; the granting of certain blanket authorizations, including the authority to sell electric energy, capacity and ancillary services at market-based rates; authority to reassign transmission capacity and resell various congestion-related products; and waiver of certain Commission regulations.

Comment Date: 5 p.m. eastern time on August 11, 2004.

10. Aquila, Inc.

[Docket No. ES04–42–000 and ES04–42–001]

Take notice that on July 19, 2004, as supplemented July 20, 2004, Aquila, Inc. (Aquila) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue securities in an amount not to exceed $700 million that will consist of a combination of: (1) long term convertible debt securities, and (2) common stock equity securities.

Comment Date: 5 p.m. eastern time on August 10, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on July 30, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1700 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–117–000, et al.]

Kentucky Utilities Company, et al.; Electric Rate and Corporate Filings

July 22, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Kentucky Utilities Company

[Docket No. EL04–117–000]

Take notice that on July 9, 2004, Kentucky Utilities Company (KU) filed a Petition for Declaratory Order pursuant to Rule 207 of the Rules of Practice and Procedure (18 CFR 385.207) of the Commission's regions. KU requests that the Commission issue a declaratory order stating that sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d, e(2000)) preempt significant portions of a lawsuit recently filed in the Commonwealth of Kentucky's Daviess Circuit Court by the City of Owensboro, Kentucky and the City Utility Commission of the City of Owensboro, Kentucky. KU also requests that the Commission address the merits of certain issues raised in that lawsuit.

Comment Date: 5 p.m. eastern time on August 12, 2004.

2. Volunteer Energy Services, Inc.

[Docket No. ER04–937–001]

Take notice that on July 19, 2004, Volunteer Energy Services, Inc. (VESI) submitted amendment to its June 17, 2004, filing in Docket No. ER04–937–000, of a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Comment Date: 5 p.m. eastern time on August 9, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1701 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–265–000]

Northern Natural Gas Company; Notice Postponing Technical Conference

July 23, 2004.

On July 21, 2004, Northern Natural Gas Company (Northern) filed a request to postpone a technical conference scheduled for Tuesday, July 27, 2004, in the above-docketed proceeding. In its filing, Northern states that parties to this proceeding have been working to resolve issues in this docket and have reached an agreement in principle in this proceeding.

By this notice, the conference previously scheduled for July 27, 2004, is postponed. Northern is directed to file a status report in this docket on or before August 16, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1678 Filed 7–29–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7794–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. section 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by Glynn Environmental Coalition, Inc. and the Center for a Sustainable Coast, Inc. (collectively, ''Plaintiffs''): *Glynn Environmental Coalition, Inc.* v. *EPA,* No. 2:04–CV–00013 (S.D. Ga.). On January 26, 2004, Plaintiffs filed a complaint against Defendants United States Environmental Protection Agency and Michael O. Leavitt, Administrator of the United States Environmental Protection Agency (collectively, ''EPA'') claiming that EPA failed to grant or deny an administrative petition (the ''Petition'') to object to a CAA title V operating permit issued by the State of Georgia for the Hercules, Inc. facility in Brunswick, Georgia. Under the terms of the proposed settlement agreement, a ''window'' between 30 and 120 days from signature of the agreement would be established for EPA to sign an order granting or denying the Petition.

DATES: Written comments on the proposed settlement agreement must be received by August 30, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2004–0008, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Kerry E. Rodgers, Air and Radiation Law Office (2344A), Office of General

Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 564–5671.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement.

Once implemented, the Settlement Agreement (the ''Agreement'') would resolve a citizen suit brought pursuant to CAA section 304(a)(2) and the Administrative Procedure Act, 5 U.S.C. section 706(1), to compel a response to the Petition filed by the Plaintiffs in January 2003. The Petition, which was filed pursuant to CAA section 505(b)(2), asked that the Administrator object to a CAA title V operating permit issued by the State of Georgia for the Hercules, Inc. wood rosins and products manufacturing facility in Brunswick, Georgia. The State of Georgia and Hercules, Inc. have intervened as Defendants-Intervenors. Upon execution of the Agreement, the parties shall jointly request that the Court stay the litigation to allow implementation of the Agreement; absent a stay, the Agreement shall be void.[1]

The Agreement, which is subject to CAA section 113(g), acknowledges that Plaintiffs intend to submit a memorandum (the ''Submission'') to EPA further supporting the Petition and requires Plaintiffs to provide that Submission to EPA within 30 days after both parties have signed the Agreement. The Agreement provides that EPA shall sign an order granting or denying the Petition no earlier than 30 days and no later than 90 days after receiving the Submission. (If Plaintiffs fail to provide a timely Submission to EPA, EPA may grant or deny the Petition at any time during the 90 days following the date the Submission is due.) EPA shall provide notice of such order to Plaintiffs within five business days following signature of such order, and EPA shall deliver notice of such order to the Office of the Federal Register no later than ten calendar days following signature of such order. Plaintiffs shall seek dismissal of the litigation with prejudice upon EPA's compliance with these obligations. During a 120-day period after entry of a Court order dismissing this case, the parties shall seek to informally resolve any claim for litigation costs, including attorney's fees, and if they cannot, Plaintiffs may seek such costs from the Court.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get A Copy of the Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2004–0008 which contains a copy of the Agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

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, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

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. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, 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 EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. 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 submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. 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. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket 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. In contrast to EPA's electronic public docket, EPA's electronic mail (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, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

[1] The Agreement was executed on July 15, 2004, and the parties filed a joint stay motion with the Court on July 16, 2004.

Dated: July 21, 2004.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 04–17380 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7795–2]

Science Advisory Board Staff Office; Request for Nominations for the Science Advisory Board Superfund Benefits Analysis Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces the formation of a new advisory panel known as the Superfund Benefits Analysis Advisory Panel, and is soliciting nominations for members of the Panel.

DATES: Nominations should be submitted by August 20, 2004 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9867; via e-mail at *stallworth.holly@epa.gov* or at the U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found on the SAB Web Site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. This law authorizes the Federal government to respond directly to releases, or threatened releases, of hazardous substances that may endanger public health, welfare or the environment. There are two basic types of Superfund cleanups: (1) Remedial actions which are generally long-term and more complex cleanups; and (2) removal actions which are generally short-term response actions taken to abate or mitigate imminent substantial threats to human health and the environment.

In 2002, EPA's Office of Solid Waste and Emergency Response (OSWER) initiated a study to enumerate, describe, quantify and, where possible, monetize the benefits of the Superfund program. OSWER is seeking advice from the SAB on the scientific soundness of the methods and analysis in this study.

The SAB is a chartered Federal Advisory Committee, established by 42 U.S.C. 4365, to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA policies and actions. The Advisory Panel will provide advice through the chartered SAB and will comply with the openness provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. The work of this panel includes reviewing background material, participating in a few public teleconferences, and attending at least two public face-to-face meetings, until the advisory is complete. The specific charge questions to the SAB Panel will be made available prior to the meeting on the SAB Web site at *http://www.epa.gov/sab/.*

The first meeting of the Advisory Panel will focus on the benefit transfer methods applied to hedonic property studies and the proposed methods for quantifying specific effect, including ecological and health effects. In a later meeting, the Advisory Panel will provide advice on the completed study.

EPA Technical Contact

The draft Superfund Benefits Analysis will be available on EPA's OSWER website at: *http://www.epa.gov/superfund.* Ms. Melissa Friedland of OSWER is the EPA technical contact and may be contacted at (703) 603–8864 or at *friedland.melissa@epa.gov.*

Request for Nominations

The SAB Staff Office is requesting nominations of recognized experts with one or more of the following areas of expertise to serve on the SAB Superfund Benefits Analysis Advisory Panel: (a) Hazardous waste management; (b) valuation for cost-benefit analysis, specifically hedonic pricing models and methods; (c) ecological risk assessment; (d) public health and epidemiology, and (e) toxicology and human health risk assessment of toxic chemicals.

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate individuals qualified in the areas of expertise described above to serve on the SAB Superfund Benefits Analysis Advisory Panel. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board which can be accessed through a link on the blue navigational bar on the SAB Web site at: *http://www.epa.gov/sab.* To be considered, all nominations must include the information requested on that form.

Anyone who is unable to submit nominations using this form and anyone with questions concerning any aspects of the nomination process may contact the DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than August 20, 2004. Any questions concerning either this process or any other aspects of this notice should be directed to the DFO. The process for forming an SAB panel is described in the Overview of the Panel Formation Process at the Environmental Protection Agency, Science Advisory Board (EPA–SAB–EC–COM–02–010), on the SAB Web site at: *http://www.epa.gov/sab/pdf/ecm02010.pdf.*

The SAB Staff Office will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast''), the SAB Staff Office will develop a smaller subset (known as the ''Short List'') for more detailed consideration. The Short List will be posted on the SAB Web Site at: *http://www.epa.gov/sab,* and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panel.

For the SAB, a balanced panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by SAB Staff Office independently of the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual Panel member include: (a)

Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

Dated: July 26, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–17376 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7795–3]

Science Advisory Board Staff Office; Request for Nominations for the Science Advisory Board's Consultation on EPA's Regional Vulnerability Assessment Methods for Multi-Scale Decision-Making

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting nominations to augment expertise on the SAB Ecological Processes and Effects Committee for a panel to provide consultation to EPA on the Regional Vulnerability Assessment (ReVA) integration tool and underlying methods for multi-scale decision making. ReVA is an approach to conducting comprehensive regional-scale environmental assessments that can inform decision-makers about anticipated environmental vulnerabilities. A suite of predictive tools and methods is incorporated into ReVA.

DATES: Nominations should be submitted by August 20, 2004 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9995; via e-mail at *armitage.thomas@epa.gov;* or at the U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found in the SAB web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background

The EPA Office of Research and Development has requested a consultation with the SAB to review the methods and predictive tools used in ReVA, and the effectiveness of the ReVA integration toolkit (the ReVA web-based Environmental Decision Toolkit or EDT) for communicating risk and uncertainty to clients and users. EPA's ReVA Program develops approaches to conducting comprehensive, regional-scale environmental assessments that can inform decision-makers about the magnitude, extent, distribution, and uncertainty of current and anticipated environmental vulnerabilities. In the context of ReVA, environmental vulnerabilities are risks of serious degradation of ecological goods and services that are valued by society. ReVA approaches make use of existing spatial data to depict: (1) The current patterns of condition and distribution of resources and human demographics, (2) variability in sensitivity of resources and human populations to various stresses, and (3) estimated spatial distribution of stressors. Future vulnerability estimates derived by ReVA include syntheses of: (1) modeled estimates of ecological drivers of change (*i.e.* changes in pollution and pollutants, resource extraction, spread of non-indigenous species, land use change, and climate change) and resulting changes in stressor patterns; and (2) changes in resource sensitivity and projected changes in human demographics. The predictive tools in ReVA provide decision-makers with information about current and future cumulative stresses and spatially-explicit identification of anticipated environmental problems. These predictive tools can also be used to illustrate the trade-offs associated with alternative environmental and economic policies in the context of dynamic stakeholder values. ReVA relies heavily on the use of geographic information system technologies and quantitative integration and assessment methods to develop useful measures of a suite of decision-criteria for decision-makers at multiple scales.

The Science Advisory Board is a chartered Federal advisory committee, which reports directly to the EPA Administrator. The panel being formed will provide advice to the Agency, asa part of the SAB's mission to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA positions and regulations. The Panel will provide advice to the EPA through the Chartered SAB. The Panel will comply with the provisions of the Federal Advisory Committee Act and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, which can be found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec0210.pdf.* The work of this panel includes reviewing background material, and participating in a two-day face-to-face meeting for the consultation.

Tentative Charge to the Panel

EPA's Office of Research and Development seeks the opportunity for a consultation with the SAB to receive comments on: (1) The scientific validity of the methods and predictive tools used in ReVA, (2) the effectiveness of the ReVA integration toolkit for communicating risk and uncertainty to users and clients, and (3) the applicability of ReVA tools and methods for targeting current and future environmental vulnerabilities and making decisions at local and regional scales.

Request for Nominations

The SAB Staff Office is requesting nominations to augment expertise on the SAB Ecological Processes and Effects Committee to form an SAB panel for a consultation on the ReVA methods for multi-scale decision making. To augment expertise on the Ecological Processes and Effects Committee, the SAB Staff Office is seeking individuals who have expertise in one or more of the following areas: (a) Decision science and environmental decision-making; (b) landscape ecology; (c) analysis of land use change; (d) ecology and the use of geographic information system technology to analyze environmental stressors and effects; (e) ecological risk

assessment; and (f) environmental statistics.

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate individuals qualified in the areas of expertise described above to serve on the Subcommittee. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site, *http://www.epa.gov/sab*. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab*. To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form, and any questions concerning any aspects of the nomination process may contact the DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than August 20, 2004. Any questions concerning either this process or any other aspects of this notice should be directed to the DFO.

The SAB will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast''), SAB Staff will develop a smaller subset (known as the ''Short List'') for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the Panel.

For the SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by SAB Staff independently of the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf*.

In addition to reviewing background material, Panel members will be asked to attend one public face-to-face meeting over the anticipated course of the advisory activity.

Dated: July 26, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–17377 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6654–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa*

Weekly receipt of Environmental Impact Statements

Filed July 19, 2004 Through July 23, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040339, Draft EIS, NPS, GA, Chattahoochee River National Recreation Area General Management Plan, Implementation, Chattahoochee River, Atlanta, GA, Comment Period Ends: September 13, 2004, Contact: Dave Elk (678) 538–1321.

EIS No. 040340, Final EIS, NRS, TN, Cane Creek Watershed Remedial Plan, Widening and Degradation of the Cane Creek Channel, Lauderdale County, TN, Wait Period Ends: August 30, 2004, Contact: James W. Ford (615) 277–2531.

EIS No. 040341, Final EIS, NPS, NY, Saratoga National Historical Park General Management Plan, Implementation, Hudson River Valley, Towns of Stillwater and Saratoga, Saratoga County, NY, Wait Period Ends: August 30, 2004, Contact: Doug Lindsay (518) 664–9821.

EIS No. 040342, Draft EIS, AFS, MT, Gallatin National Forest, Main Boulder Fuels Reduction Project, Implementation, Gallatin National Forest, Big Timber Ranger District, Big Timber, Sweet Grass and Park Counties, MT, Comment Period Ends: September 13, 2004, Contact: Barbara Ping (406) 522–2570. This document is available on the Internet at: *http://www.fs.fed.us/r1/gallatin/?page=projects.main_boulder.*

EIS No. 040343, Draft EIS, FHW, OH, U.S. 33, Nelsonville Bypass Project, To Upgrade Existing Four-Lane Controlled Access Expressway between Haydenville in Hocking County and New Floodwood in Hocking and Athens Counties, OH, Comment Period Ends: September 13, 2004, Contact: Davis Synder (614) 280–6852.

EIS No. 040344, Draft EIS, AFS, AL, Longleaf Ecosystem Restoration Project, Proposes a Five-Year Project to Begin Restoration of Native Longleaf, Talladega National Forest, Oakmulgee District, Tuscaloosa, Hale, Bibbs and Perry Counties, AL, Comment Period Ends: September 13, 2004, Contact: Jim Shores (205) 926–9765.

EIS No. 040345, Final EIS, NOA, WA, ID, OR, CA, Pacific Coast Groundfish Fishery Management Plan, Amendment 16–3 Adopts Rebuild Plans for Bocaccio, Cowcod, Widow Rockfish and Yelloweye Rockfish, Maximum Sustainable Yield (MSY), Implementation, WA, OR, ID and CA, Wait Period Ends: August 30, 2004, Contact: D. Robert Lohn (206) 526–6150. This document is available on the Internet at: *http://www.pcouncil.org/nepa/nepatrack.html.*

EIS No. 040346, Final EIS, DOE, OR, Northeast Oregon Hatchery Program, Grande Ronde—Imnaha Spring Chinook Hatchery Modification and

Modernization of Two Existing Hatchery Facilities and Construction of Three New Auxiliary Hatchery Facilities, Wallowa County, OR, Wait Period Ends: August 30, 2004, Contact: Mickey Carter (503) 230–5885.

EIS No. 040347, Final EIS, UAF, WV, Aircraft Conversion for the 167th Air Wing (167 AW) of the West Virginia Air National Guard, Converting C–13OH Transport Aircraft to the Larges C–5 Transport Aircraft, Acquisition of Land via Lease, and Construction of Facilities on existing and acquired Parcel, Berkely County, WV, Wait Period Ends: August 30, 2004, Contact: Ray Detig (301) 836–8120.

Dated: July 27, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–17381 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6654–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–BIA–C60004–NY Rating EC2, St. Regis Mohawk Tribe, Mohawk Mountain Casino and Resort, Proposed Transfer of 66 Acres of Land into Federal Trust Status, Fee-to-Trust Acquisition, Sullivan County, NY.

Summary: EPA expressed environmental concerns due to direct and cumulative impacts to groundwater and surface water.

ERP No. D–BLM–J67031–ND Rating EC2, West Mine Area, Freedom Mine Project, Application to Acquire Federal Coal Lease, Mercer County, ND.

Summary: EPA expressed environmental concerns about air quality impacts and adequate protection for fens and peatland wetlands.

ERP No. D–COE–C40162–NJ Rating EO2, NJ 92 Project, New Jersey Turnpike Authority, Transportation Improvement from East-West Highway Link Connecting U.S. Route1 in South Brunswick Township with the New Jersey Turnpike at Interchange 8A in Monroe Township, Middlesex County, NJ.

Summary: EPA objected to the proposed permit based on the potential for significant environmental impacts and that all reasonable alternatives, including those with fewer environmental impacts, have not been fully evaluated.

ERP No. D–COE–E39065–FL Rating LO, Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Aquifer Storage and Recovery (ASR) Pilot Operation, Aquifer Storage and Recovery Pilot Project, To Test the Feasibility Utilizing ASR Technology for Water Storage at Seven Well Sites, Right-of-Way and NPDES Permits, Several Counties.

Summary: While EPA had no objections to the proposed project, EPA requested clarification on to identifying applicable standards for groundwater injection and surface water discharges.

ERP No. D–DOI–J39031–UT Rating EC2, Utah Lake Drainage Basin Water Delivery System (ULS), Construction and Operation, Bonneville Unit of the Central Utah Project (CUP), Utah, Salt Lake, Wasatch and Juab Counties, UT.

Summary: EPA expressed environmental concerns relating to water quality impacts, as well as project purpose and information on affected environment, and implementation of water conservation.

ERP No. D–HUD–C85045–NY Rating EC2, Ridge Hill Village Project, Construction, Comprehensive Development Plan, (CDP), Planned Mixed-Use Development District (PMD), U.S. Army COE Section 404, City of Yonkers, Westchester County, NY.

Summary: EPA expressed concerns due to air quality impacts given Westchester County's current non-attainment status. EPA requested that the Final EIS include additional information such as a meso-scale analysis to address the air quality issues.

ERP No. D–NOA–E39066–FL Rating LO, Programmatic EIS—Seagrass Restoration in the Florida Keys National Marine Sanctuary, Implementation, U.S. Army COE Section 404 and CZMA Permits, Monroe County, FL.

Summary: While EPA has no objection to the proposed action, EPA did request clarification on the preferred alternative in relation to specific regions within the Sanctuary, and defining thresholds for developing future site-specific NEPA documents tiering from this document.

ERP No. D–NOA–L91023–00 Rating EC2, Pacific Coast Groundfish Fishery Management Plan, Amendment 16–3 Adopts Rebuild Plans for Bocaccio, Cowcod, Widow Rockfish and Yelloweye Rockfish, Maximum Sustainable Yield (MSY), Implementation, WA, OR, ID and CA.

Summary: EPA expressed concerns due to impacts on habitat, cowcod stock status, and uncertainty of bycatch information, and impacts on habitat.

ERP No. D–NOA–L91024–00 Rating EC2, Puget Sound Chinook Harvest Resource Management Plan (RMP) 2004–2009, Implementation, Endangered Species Act, OR and WA.

Summary: EPA expressed concerns that the proposed action will not meet many of the escapement and rebuilding goals established in the management plan. EPA also expressed concerns with Puget Sound chinook salmon fishing mortalities in Canadian waters, hatchery augmentation and the applicability of the management plant to the 2004 fishing season.

ERP No. D–SFW–B64004–ME Rating LO, Petit Manan National Wildlife Refuge Complex, Comprehensive Conservation Plan, Implementation, the Gulf of Maine.

Summary: EPA had no objection to the proposed project.

Final EISs

ERP No. F–AFS–J65405–ND Equity Oil Company Federal 32–4 and 23–21 Oil and Gas Wells Surface Use Plan of Operation (SUP0), Implementation, Located in the Bell Lake Inventoried Roadless Area (IRA), Dakota Prairie Grasslands, Medora Ranger District, Goldon Valley County, ND.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–J01080–WY West Hay Creek Coal Lease Application, Federal Coal Leasing, Buckskin Mine, Powder River Basin, Campbell County, WY.

Summary: EPA continues to express environmental concerns about regional air quality and impacts to and mitigation for playa wetlands. EPA supports mitigation methods for controlling fugitive dust and suggests those in use be reviewed to determine if additional measures are needed. EPA supports the efforts to control nitrogen dioxide releases from blasting and encourages measures to eliminate these toxic emissions.

ERP No. F–COE–G61042–NM Closure of the Al Black Recreation Area at the Cochiti Lake Dam Outlet Works, Implementation, Sandoval County, NM.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–F09004–OH Portsmouth, Ohio Site Depleted Uranium Hexafluoride Conversion Facility, Construction and Operation, Pike County, OH.

Summary: Since EPA's previous concerns have been resolved, EPA has no objection to the proposed action.

ERP No. F–FRC–B05193–CT Housatonic River Hydroelectric Project, Application to Relicense Existing Licenses for Housatonic Project No. 2576–022 and the Falls Village Project No. 2597–019, Housatonic River Basin, Fairfield, New Haven and Litchfield Counties, CT.

Summary: EPA expressed concerns about the range of alternatives considered and the consistency of the preferred alternative with conditions of the Clean Water Act Section 401 water quality certification.

ERP No. F–FRC–L05230–OR Pelton Round Butte Hydroelectric Project, (FERC No. 2030–036), Application for a New License for Existing 366.82–megawatt Project, Deschutes River, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–K11113–00 Air Force Mission at Johnston Atoll Airfield (Installation) Termination, Implementation, Johnston Atoll is an Unincorporated Territory of the United States.

Summary: The FEIS addressed many of EPA's previous concerns. EPA requested commitments in the NEPA Record of Decision on waste minimization, pollution prevention and responsibility for environmental contaminants, and to identify the geographic boundaries of areas where the Defense Department will have jurisdiction and management responsibilities.

ERP No. F–USA–K11111–HI Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team in Hawai'i, Implementation, Honolulu and Hawai'i Counties, HI.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 26, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–17382 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7795–4]

Science Advisory Board Staff Office; Notification of Upcoming Teleconference Meetings of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB) Staff Office is announcing two public teleconferences of the SAB's Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS).

DATES: August 23, 2004, 1 -2:30 p.m. (eastern time) and August 25, 2004, 1—2:30 p.m. (eastern time).

ADDRESSES: Access to the teleconference will be by telephone only at: 866–299–3188. Dial the conference code 202–564–4562 and press # when prompted.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone/voice mail at: (202) 343–9981, via e-mail at: nugent.angela@epa.gov, or by mail at U.S. EPA SAB (MC 1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Background on the Committee and its charge was provided in 68 FR 11082 (March 7, 2003). The purpose of the teleconferences is to discuss work initiated at prior meetings of the Committee and prepare for the Committee's next meeting. The agendas for the teleconferences are likely to include:

1. Update/Discussion on Conclusions Drawn from Confined Animal Feeding Operation (CAFO) Break-out Session at the Committee's June 2004 Meeting;
2. Update/Discussion on work addressing Ecological Benefit Analysis at EPA for Economically Significant Rules;
3. Update/Discussion on work on defining ''Concepts and Methods;'
4. Update/Discussion on draft report text related to ''Risk Paradigms and Experience in Valuation Exercises;'' and
5. Planning for the Committee's September 2004 Meeting.

Availability of Meeting Materials: Agendas for the teleconference meetings will be posted on the SAB Web site at: *http://www.epa.gov/sab*, prior to the meeting. Meeting materials will also be posted on the Web site, and may be requested from the DFO for those persons who can not attend the meeting.

Procedures for Providing Public Comments. The SAB Staff Office will accept written public comments of any length, and accommodate oral public comments whenever possible. The SAB expects that public statements presented at the meeting will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a teleconference meeting will be limited to three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO in writing (e-mail, fax or mail—see contact information noted above) by close of business August 16, 2004, in order to be placed on the public speaker list for the meetings. *Written Comments:* Although written comments are accepted until the date of the meeting, written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the panel for their consideration. Comments should be supplied to the DFO via the contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations: Individuals requiring special accommodation to access this meeting, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 26, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–17378 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7793–3]

Draft Total Maximum Daily Load (TMDL) for the Mahoning River Watershed, Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice announces the availability of the EPA document identifying segments and associated E. coli/fecal coliform pollutants in the Mahoning River, in Portage, Trumbull, and Mahoning Counties in Ohio, and requests public comment.

The TMDL was developed to attain water quality standards and designated uses (primary contact standard, recreational use) established for the Mahoning River, which is on the Ohio 2004 303(d) list. Segments and pollutants were listed and prioritized by the State for TMDL assessment, and recreational use and E.coli/fecal coliform impairments were identified. TMDLs specify the maximum amount of a pollutant a waterbody can assimilate and still meet water quality standards. Based upon that maximum amount, TMDLs allocate pollutant loads to sources and allocate a margin of safety (MOS). In this way, the TMDL process links the development and implementation of control actions to the attainment and maintenance of water quality standards and designated uses. This TMDL was developed by EPA, Region 5, at the request of the State of Ohio. EPA is providing the public the opportunity to review its document in accordance with section 303(d) of the Clean Water Act (CWA), 33 U.S.C. 1313(d), and 40 CFR 130.7. EPA will consider public comments in its final document.

DATES: Comments on this document must be received in writing by August 28, 2004.

ADDRESSES: Hard copies are available at: Public Library of Youngstown and Mahoning County, Main Library, 305 Wick Avenue, Youngstown, OH 44503–1079; Youngstown State University, William F. Maag Library, One University Plaza, Youngstown, OH 44555–3675.

Written comments may be submitted to: Jean Chruscicki (WW–16J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

The website to access this document is *http://www.epa.gov/region5/water/notices.html.* As an alternative, EPA will accept comments electronically. Comments should be sent to the following Internet e-mail address: *chruscicki.jean@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Jean Chruscicki,Watersheds and Wetlands Branch, at the EPA address noted above or by telephone at (312) 353–1435.

SUPPLEMENTARY INFORMATION: Section 303(d) of the CWA requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

Dated: July 19, 2004.

Anthony Carrollo,

Acting Director, Water Division, Region 5.

[FR Doc. 04–17379 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review—''Freedom to Compete'' Award.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for approval of the new information collection request (nominations of potential award recipients) which will be used for the EEOC's ''Freedom to Compete'' Award.

DATES: Written comments must be submitted by August 30, 2004.

ADDRESSES: Comments should be submitted to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer for the U.S. Equal Employment Opportunity Commission, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to *Klee@OMB.EOP.GOV.* A copy of those comments should also be sent to Stephen Llwellyn, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the EEOC's Executive Secretariat will accept EEOC's copy of comments by facsimile (''FAX'') transmission if they are six or fewer pages in length. The telephone number of the FAX receiver is (202) 663-4114 (this is not a toll-free number). Only comments of six or fewer pages will be accepted via FAX transmittal to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY) (these are not toll-free telephone numbers). Copies of comments submitted to EEOC by the public will be available to review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Lisa Fisher, Acting Director, Office of Communications and Legislative Affairs, 1801 L Street, NW., Washington, DC 20507, (202) 663–4056 (voice). This notice is available in the following formats: Large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–699–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Rehabilitation Act, title I of the Americans with Disabilities Act, and the Pregnancy Employment Discrimination Act. Pursuant to its authority under those statutes, EEOC launched the ''Freedom to Compete'' (FTC) initiative, a national outreach, education and coalition-building strategy designed to complement the agency's enforcement and litigation efforts by identifying EEO practices and programs worthy of emulation. The Commission has built and seeks to further build partnerships and strategic alliances with various stakeholders that can directly and indirectly ensure equal opportunity in the nation's workplaces. One component of this initiative is the Equal Employment Opportunity Commission's ''Freedom to Compete'' Award. The Award is designed to recognize employers, organizations and entities whose extraordinary efforts embody the EEOC's mission of ensuring individuals the freedom to compete in the workplace on a level playing field regardless of race, color, gender, age, national origin, religion or disability. The Award will be presented to entities that have demonstrated exemplary efforts in promoting free and unfettered access to opportunities in the workplace. The Award will be based on nominations received from the public.

This notice concerns the nomination form which constitutes a collection of information under the Paperwork Reduction Act. A prior notice that the EEOC would be submitting this request

to OMB for approval under the Paperwork Reduction Act was published at 68 FR 67437 (December 2, 2003), allowing for a 60 day comment period. Two comments were received, one from the Equal Employment Advisory Council and one from the National Industry Liaison Group (''NILG''). Both comments praised the EEOC's effort to recognize excellent performance in the EEO area, noting that the proposed collection was both necessary for the EEOC's proper performance and helpful in providing clarity for individuals interested in emulating a particular EEO program or initiative. In addition, NILG suggested that nomination materials be permitted to be filed electronically (the EEOC has adopted this suggestion) and that the EEOC utilize its own internal records to determine if award nominees have any EEO charges pending against them (the EEOC has not adopted this suggestion). The Commission intends to verify charge information for finalists, but believes that self-declaration will materially enhance the application process. Award applicants should be mindful of current charges in drafting nominations so that their presentations will be realistic and can address trends and practical results. For example, the applicant may be able to explain that the number of charges are trending down since implementation or that they particularly addressed a specific type of activity (*e.g.*, sexual harassment) and no new charges have been filed since full implementation. These and other types of relationships between the implemented practice and pending charges may not be obvious to Commission staff from Commission data. Of course, if the information on charges is not readily available (*e.g.*, nominations from third parties), the nominating party can simply explain that the information is not available and the Commission will rely on its own data.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment on its proposed nomination form to enable it to:

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

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

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

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

The remainder of this **SUPPLEMENTARY INFORMATION** section provides the public with information it will need to comment on the EEOC proposal. It contains an overview of the information collection and the proposed nomination form.

Overview of This Information Collection

Title: Nomination for the Equal Employment Opportunity Commission's ''Freedom to Compete'' Award.

OMB Number: None.

Description of Affected Public: Individuals or households; Businesses or other for profit, Not-for-profit institutions; State or local governments.

Number of Responses: 100.

Estimated Reporting Time Per Respondent: 10 hours.

Total Burden Hours: 1,000 hours.

Federal Cost: None.

Proposed Nomination Form

''Freedom To Compete'' Award

The Equal Employment Opportunity Commission's ''Freedom to Compete'' Award is designed to recognize organizations and individuals whose extraordinary efforts embody the EEOC's mission of ensuring individuals the freedom to compete in the workplace on a level playing field and to go as far as their talent and abilities will allow regardless of race, color, gender, age, national origin, religion or disability. Award winners will be given the Commission's ''Freedom to Compete'' Award, which will be presented by the Chair of the Commission at an annual ceremony in Washington, DC. All nominees will be required to disclose any charges and litigation involving the statutes enforced by the Commission. Receipt of the ''Freedom to Compete'' Award does not constitute a waiver by the Commission nor will it be considered with respect to any future charges and investigations against nominees or award recipients. Background: In 2002, under the leadership of Chair Cari M. Dominguez, EEOC launched the ''Freedom to Compete'' (FTC) initiative, a national outreach, education and coalition-building strategy designed to complement the agency's enforcement and litigation efforts by identifying EEO practices and programs worthy of emulation. The Commission has built and seeks to further build partnerships and strategic alliances with various stakeholders that can directly and indirectly influence positive change in the nation's workplaces. The Award will be presented to individuals and organizations that have demonstrated exemplary efforts in promoting free and unfettered access to opportunities in the workplace. The Award will be called the ''Freedom to Compete'' Award.

Eligibility Criteria

The following criteria apply to the Freedom to Compete Award Nominees:

A. The nominees must be public or private employers, corporations, associations, organizations, or others whose activities exemplify the goals of the Chair's ''Freedom to Compete'' initiative. Nominees may self-nominate or be nominated by others.

B. Nominees must have implemented a program or practice that has successfully removed barriers that hinder free and fair workplace competition and increased access, inclusion, and/or promotional opportunities for qualified workers. The program or practice must involve one or more of the following components: Innovative leadership, outreach, education, recruitment, training/development, promotion, retention, and/or mentoring.

C. Nominees must report any unresolved violations of state or Federal law, or any pending Federal or state enforcement actions, any corrective actions or consent decrees that have resulted from litigation under the laws enforced by the Equal Employment Opportunity Commission.

D. Recipients of this Award agree to participate in programs, meetings, and/or other collaborative efforts with the Commission for the purpose of publicizing the award-winning program/effort, and agree to share information to assist other entities seeking to replicate the program/effort. Recipients agree to take part in Commission efforts to promote the ''Freedom to Compete'' Award and the principles of free and fair workplace competition that underlie the award.

Nomination Submission Requirements

This is an essay format (1,000 words or less) application. Programs/activities must have been in place for at least one year and have measurable and demonstrable results. Essays should include the following:

• A profile of your organization—its mission, size, number of employees, nature of work, and, if a business, a description of its products/services, assets and annual revenues.

• A description of what led you to implement the program/practice.

• How you went about developing the program/practice. Describe who was involved, how it evolved, whether any major obstacles were encountered and how they were overcome, and how long the program/practice has been in place.

• A description of the program/practice. Explain the structure of the program/practice, how it is managed and measured, and who is accountable for results.

• Describe the level of executive involvement in, and commitment to, the program/practice during both development and implementation.

• A description of the tangible results. Explain what makes your program/practice effective, and how it has positively affected the lives of your workers. Address how the program/practice has helped to bring about free and fair competition in your workplace.

• A description of the joint activities your organization and the EEOC could undertake to share the program/effort with other entities and to promote the principles of free and fair workplace competition in partnership. Explain why others would find your program valuable.

Timing and Acceptable Methods of Submission of Nominations

Nomination packages must be submitted to ____, 1801 L Street, NW., Washington, DC 20507 by ____. Submissions may be made by hand delivery, by regular mail or electronically to *Freedom2eeoc.gov.* Any application received or postmarked after ____ will not be considered. All applications will be acknowledged.

The Administrative Review Process

Nominations will be evaluated by EEOC staff, with final award determinations made by the EEOC Chair.

Location

The awards ceremony will generally be held during the month of ____ at a location to be determined by the EEOC Chair.

Paperwork Reduction Act Notice

Persons are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB number ____ (Expiration Date: ____). The obligation to respond to this information collection is voluntary; however, only nomination that follow the nomination procedures outlined in this notice will receive consideration. The average time to respond to this information collection is estimated to be 10 hours per response; including time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this estimate; including suggestions for reducing response time to the U.S. Equal Employment Opportunity Commission, Office of the Chair, 1801 L Street, NW., Washington, DC 20507. Please reference to OMB Number ____. We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the Equal Employment Opportunity Commission's Freedom to Compete Award. Your comments will be very useful to the Commission in making improvements in our solicitation for nominations for this award in subsequent years.

Dated: July 22, 2004.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 04–17399 Filed 7–29–04; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 21, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 30, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Qualifications Questions.

Form No.: FCC Form 312–EZ.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,872.

Estimated Time Per Response: 10 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 38,720 hours.

Total Annual Cost: $9,874,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: FCC Form 312–EZ is currently approved under OMB Control Number 3060–0678. However, the Commission is now requesting a new, separate OMB Control Number in order to reduce the size of the information collection requirements that are in 3060–0678. Additionally, part 25 of the Commission's rules related to space stations and earth stations remain under 3060–0678. This FCC Form 312–EZ is used by earth station applicants. If an applicant can answer ''yes'' to the questions on the form, they can use the FCC Form 312–EZ (auto grant form). If the applicant cannot answer ''yes'' to those questions, then they must use FCC Form 312. The FCC Form 312–EZ has been developed to reduce the filing burden on applicants.

OMB Control No.: 3060–XXXX.

Title: Renewal of Application for Satellite Space and Earth Station Authorization.

Form No.: FCC Form 312–R.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 6.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 12 hours.

Total Annual Cost: $2,100.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: FCC Form 312–R is currently approved under OMB Control Number 3060–0678. However, the Commission is now requesting a new, separate OMB Control Number in order to reduce the size of the information collection requirements that are in 3060–0678. Additionally, part 25 of the Commission's rules related to space stations and earth stations to renew their licenses. In the previous application filings with the Commission, the FCC Form 405 was used. The FCC Form 312–R now supersedes the FCC Form 405 and has been developed to reduce the filing burden on applicants. It allows electronic filings of renewals in the International Bureau Filing System (IBFS).

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–17424 Filed 7–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 20, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 30, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0206.

Title: Part 21—Domestic Public Fixed Radio Services.

Form No.: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15,858.

Estimated Time Per Response: 10 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 10,221 hours.

Total Annual Cost: $1,244,300.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The information requested in part 21 is used by the Commission to fulfill its obligations as set forth in sections 308 and 309 of the Communications Act of 1934, as amended. The information is used by FCC staff to determine the technical, legal and other qualifications of applicants to operate a station in the Multipoint Distribution Service (MDS). The Commission is seeking extension (no change in requirements) in order to obtain the full three year clearance from OMB.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–17425 Filed 7–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 20, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before September 28, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith

B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0971.

Title: Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket Nos. 96–98 and CC Docket Nos. 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket Nos. 99–200 (Second Report and Order).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents: 2,050.

Estimated Time per Response: .25—3 hours.

Frequency of Response: On occasion reporting requirement and third party requirement.

Total Annual Burden: 14,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Second Report and Order in CC Docket Nos. 99–200 and 96–98, released December 29, 2000 requires that carriers, which report forecast and utilization data semi-annually to the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator, duplicate the data for state commissions upon request, and that to request a ''for cause'' audit of a carrier, the NANPA, the Pooling Administrator, or a state commission must draft a request to the auditor stating the reason for the request, *i.e.*, as misleading or inaccurate data, and attach supporting documentation. The FCC, state commissions, the NANPA, and the Pooling Administrator use this information to verify the validity and accuracy of the data to assist state commissions in carrying out their numbering responsibilities, *i.e.*, as area code relief.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–17426 Filed 7–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 21, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before September 28, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1013.

Title: Mitigation of Orbital Debris.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time per Response: 5 hours.

Frequency of Response: One time reporting requirement and third party requirement.

Total Annual Burden: 135 hours.

Total Annual Cost: $36,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is revising this information collection to reflect the new and/or modified information collection requirements that resulted from the Second Report and Order, ''In the Matter of Mitigation of Orbital Debris.'' This rulemaking was released by the Commission on June 21, 2004. The Commission amended Parts 5, 25, and 97 of the Commission's rules by adopting new rules concerning mitigation of orbital debris. Orbital debris consists of artificial objects orbiting the earth that are not functional spacecraft. Adoption of these rules will help preserve the United States' continued affordable access to space, the continued provision of reliable U.S. space-based services—including communications and remote sensing satellite services for U.S. commercial, government, and homeland security purposes—as well as the continued safety of persons and property in space and on the surface of the earth. Under the rules as amended today, a satellite system operator requesting FCC space station authorization, or an entity requesting a Commission ruling for access to a non-U.S.-licensed space station under the FCC's satellite market access procedures, must submit an orbital debris mitigation plan to the Commission regarding spacecraft design and operation in connection with its request. This Second Report and Order provides guidance for the preparation of such plans. The Commission also adopted requirements concerning the post-mission disposal of Commission-licensed space stations operating in or near the two most heavily used orbital regimes, low-earth orbit (LEO), and geostationary-earth orbit (GEO). Adoption of these rules will further the domestic policy objective of the United States to minimize the creation of orbital debris and is consistent with international policies and initiatives to achieve this goal.

The information collection requirements accounted for in this collection are necessary to mitigate the potential harmful effects of orbital debris accumulation. Without such information collection requirements, the growth in the orbital debris may limit the usefulness of space for communications and other uses in the future by raising the costs and lowering the reliability of space-based systems.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–17427 Filed 7–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 23, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before September 28, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060–0508.

Title: Rewrite of Part 22.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 132,300.

Estimated Time per Response: 15 minutes—40 hours.

Frequency of Response: Recordkeeping requirement, on occasion, quarterly, semi-annually and annually reporting requirements.

Total Annual Burden: 1,132,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services. The information collected is used to determine on a case-by-case basis, whether or not to grant licenses authorizing construction and operation of wireless telecommunications facilities to common carriers. Further, this information is used to develop statistics about the demand for various wireless licenses and/or the licensing process itself, and occasionally for rule enforcement purposes.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–17430 Filed 7–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2665]

Petitions for Reconsideration of Action in Rulemaking Proceeding

July 22, 2004.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC, or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by August 16, 2004. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Table of Allotments Digital Television Broadcast Stations (Albany, New York) (MB Docket No. 02–92, RM–10363).

Number of Petitions Filed: 3.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–17429 Filed 7–29–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2004–N–11]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the information collection entitled ''Federal Home Loan Bank Directors.''

DATES: Interested persons may submit comments on or before September 28, 2004.

COMMENTS: Submit comments by any of the following methods:

E-mail: *comments@fhfb.gov.*

Fax: 202/408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, Attention: Public Comments.

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at *comments@fhfb.gov* to ensure timely receipt by the agency.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Collection; Comment Request: Federal Home Loan Bank Directors. 2004–N–11.

We will post all public comments we receive on this notice without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at *http://www.fhfb.gov/pressroom/pressroom_regs.htm.*

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, Office of Supervision by telephone at 202/408–2872, by electronic mail at *sweeneyp@fhfb.gov,* or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 7 of the Federal Home Loan Bank Act (Bank Act) and the Finance Board's implementing regulation establish the eligibility requirements and the procedures for electing and

appointing Federal Home Loan Bank (FHLBank) directors. *See* 12 U.S.C. 1427; 12 CFR part 915. Under part 915, the FHLBanks determine the eligibility of elective directors and director nominees and run the director election process. The Finance Board determines the eligibility of and selects all appointive FHLBank directors. To determine eligibility, the FHLBanks use the Elective Director Eligibility Certification Form and the Finance Board uses the Appointive Director Eligibility Certification Form. The Finance Board regulation also requires incumbent directors to certify annually that they continue to meet the director eligibility requirements.

The Finance Board uses the information contained in the Appointive Director Eligibility Certification Form and part 915 to determine whether prospective and incumbent appointive directors satisfy the statutory and regulatory eligibility requirements. Only individuals meeting these requirements may serve as appointive FHLBank directors. *See* 12 U.S.C. 1427(a) and (f)(2). The FHLBanks, and where appropriate, the Finance Board, use the information in the Elective Director Eligibility Certification Form and part 915 to determine whether elective directors and director nominees satisfy the statutory and regulatory eligibility requirements. Only individuals meeting these requirements may serve as elective FHLBank directors. *See* 12 U.S.C. 1427(a), (b) and (f)(3).

The likely respondents include FHLBanks, FHLBank members, and prospective and incumbent FHLBank directors.

The OMB number for the information collection is 3069–0002. The OMB clearance for the information collection expires on October 31, 2004.

B. Burden Estimate

The Finance Board estimates that total number of respondents is 4,976, which includes 12 FHLBanks, 4600 FHLBank members, and 364 prospective and incumbent FHLBank directors. As explained below, the Finance Board estimates that the total annual hour burden for all respondents is 5,302 hours.

The Finance Board estimates the total annual average hour burden for each FHLBank to run the election of directors and process director nominee/director forms is 235 hours. The estimate for the average hour burden for all FHLBanks is 2,820 hours (12 FHLBanks × 235 hours).

The Finance Board estimates the total annual average hour burden for an FHLBank member to participate in the director election process is 30 minutes. The estimate for the average hour burden for all FHLBank members that participate in the director election process is 2,300 hours (4,600 FHLBank members × 0.5 hours).

The Finance Board estimates the total annual average number of prospective and incumbent appointive directors at 84, with 1 response per individual. The estimate for the average hour burden per individual is 30 minutes. The estimate for the average hour burden for all prospective and incumbent appointive directors is 42 hours (84 prospective and incumbent appointive directors × 1 response per individual × 0.5 hours). The Finance Board estimates the total annual average number of prospective and incumbent elective directors at 280, with 1 response per individual. The estimate for the average hour burden per individual is 30 minutes. The estimate for the annual hour burden for all prospective and incumbent elective directors is 140 hours (280 prospective and incumbent elective directors × 1 response per individual × 0.5 hours). The estimate for the average hour burden for all prospective and incumbent FHLBank directors is 182 hours (84 prospective and incumbent appointive directors + 280 prospective and incumbent elective directors) × 1 response per individual × 0.5 hours).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: July 26, 2004.

By the Federal Housing Finance Board.

Donald Demitros,

Chief Information Officer.

[FR Doc. 04–17331 Filed 7–29–04; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 13, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Douglas E. Hazel Revocable Trust, Douglas E. Hazel, Trustee, Washington, Missouri; the Cynthia Hazel Gilbertson Revocable Trust, Cynthia Hazel Gilbertson, as trustee, Faribault, Minnesota; and Hazel Investments, Limited Partnership, Washington, Missouri, as a group acting in concert to acquire voting shares of Cardinal Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire voting shares of Citizens National Bank of Greater St. Louis, Maplewood, Missouri.

Board of Governors of the Federal Reserve System, July 26, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–17337 Filed 7–29–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Eastman Acquisition Holding Company, Ponca City, Oklahoma; to become a bank holding company by acquiring up to 100 percent of the voting shares of Eastman National Bancshares, Inc., Newkirk, Oklahoma, and thereby indirectly acquire voting shares of Eastman National Bank of Newkirk, Newkirk, Oklahoma.

Board of Governors of the Federal Reserve System, July 26, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–17335 Filed 7–29–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 04-16821) published on page 44007 of the issue for Friday, July 23, 2004.

Under the Federal Reserve Bank of San Francisco heading, the entry for First National Bank Holding Company Scottsdale, Arizona, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. First National Bank Holding Company, Scottsdale, Arizona; to acquire First Capital Bank of New Mexico, Albuquerque, New Mexico, and thereby engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Comments on this application must be received by August 17, 2004.

Board of Governors of the Federal Reserve System, July 26, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–17336 Filed 7–29–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Adolescent Family Life (AFL) Research Grants

Funding Opportunity Title: Announcement of Availability of Funds for Grants for Adolescent Family Life (AFL) Research.

Announcement Type: This announcement is a modification of the program announcement for AFL research grants published in the **Federal Register** on June 20, 2003 (68 FR 36992). It is being reissued as a standing announcement to remain in effect through September 15, 2006, unless it is withdrawn, with an annual application receipt date of September 15.

Funding Opportunity Number: PAR–04–185.

CFDA Number: 93.111.

Authority: Section 2008 of the Public Health Service (PHS) Act.

DATES: This standing program announcement will remain in effect through September 15, 2006, unless it is withdrawn. To receive consideration, a package containing a signed typewritten application, including the checklist, and two photocopies of the application must be received at the address below no later than September 15 of each year the program announcement remains in effect. Letters of intent should be received by August 15 of the year in which an application will be submitted.

SUMMARY: The Office of Population Affairs (OPA) requests applications for grants for applied research addressing Adolescent Family Life (AFL) program goals related to adolescent sexual relations, pregnancy, and parenthood: helping adolescents avoid health risk behaviors; ensuring that adolescents have the supports necessary to pursue healthy and productive lives; and strengthening families. Grant awards will be made to investigate one or more of the following seven areas: (1) Parent involvement and communication; (2) youth development/developmental assets; (3) pro-social risk behaviors; (4) adoption; (5) adolescent parents; (6) long term impact of adolescent childbearing on family structure; and (7) influences on adolescent premarital sexual behavior.

Title XX of the Public Health Service Act, in section 2008 (42 U.S.C. 300z–7), authorizes research concerning the societal causes and consequences of adolescent premarital sexual relations, pregnancy and child rearing. The statute also provides authority for research to identify effective services which alleviate, eliminate, or resolve any negative consequences of adolescent premarital sexual relations and adolescent childbearing for the parents, the child, and their families. Regulations pertaining to grants for research projects are set out at 42 CFR part 52.

I. Funding Opportunity Description

This announcement seeks proposals for grants for applied research addressing AFL program goals related to adolescent premarital sexual relations, pregnancy, and parenthood: helping adolescents avoid health risk behaviors; ensuring that adolescents have the supports necessary to pursue healthy and productive lives; and strengthening families.

Background

The Adolescent Family Life (AFL) Program was enacted in 1981 as Title XX of the Public Health Service Act. The program supports two types of demonstration projects: (1) prevention demonstration projects to develop, implement, and evaluate programs that provide sexuality education designed to prevent adolescent premarital sexual relations and other health risk behaviors; and (2) care demonstration projects to develop, implement and evaluate interventions (including presenting adoption as an option) with pregnant and parenting adolescents, including fathers, their infants, and other family members in an effort to alleviate the negative consequences of adolescent childbearing. The program is also authorized to conduct both basic and applied research on the causes and consequences of adolescent premarital sexual relations, adolescent pregnancy and parenting.

Purposes of the Grant

The purpose of this grant is to expand the research base in a number of areas

that are directly applicable to prevention and care program interventions for adolescents. To that end, this announcement invites applications in one or more of the following areas:

1. *Parent Involvement and Communication.* Research has shown the importance of parents' involvement with their children and open communication between parent and child in the prevention of adolescent premarital sexual activity, pregnancy and sexually transmitted infection, as well as other adolescent risk behaviors. Many interventions designed to reduce these risks have thus added specific components for parents. Unfortunately, efforts to enroll and retain parents in these programs have too often been unsuccessful. Careful examination of recruitment strategies, and the interventions themselves, should provide insights on how to more effectively implement these program components. Research questions of interest include, but are not limited to:

(a) Factors that affect recruitment and retention of parents in prevention programs for adolescents;

(b) Evaluations of strategies or interventions designed to assist parents in effectively communicating with their children about sexuality issues; and

(c) Mechanisms and/or venues for educating parents on adolescent development, the importance of parental expectations and boundary setting, and sexuality issues.

2. *Youth Development/Developmental Assets.* The Youth Development or Developmental Assets approach, either by itself or in combination with sexuality education, is increasingly used in programs designed to prevent adolescent sexual activity, pregnancy, and sexually transmitted infection or other risk behaviors and negative outcomes. Strategies encompass strengthening families, fostering lasting relationships with adult mentors, involving youth in community service, promoting connectedness with school, providing opportunities to engage in sports and cultural activities, building confidence and self-efficacy; all are designed to strengthen supports, either internal or external, for youth as they transition to adulthood. Research questions of interest include, but are not limited to:

(a) Incorporating youth development concepts into risk avoidance interventions for adolescents;

(b) Impact of youth development strategies on adolescent premarital sexual relations and other health risk behaviors; and

(c) Impact of youth development strategies (*e.g.*, education, vocational training, employment) on transition to self-sufficiency and other positive outcomes for adolescent parents.

3. *Pro-Social Risk Behaviors.* It is well established that some amount of risk taking in adolescence is normative in that it helps define and develop identity. While risk taking is part of the normal developmental spectrum for adolescents, risk behaviors fall into two broad categories: those that are associated with negative consequences such as drug, tobacco and alcohol use, sexual activity and violence as opposed to those that are associated with more positive outcomes—pro-social risk behaviors such as athletics, academic endeavors, or community service. Research questions of interest include, but are not limited to:

(a) The impact on adolescent sexual behavior of programs offering pro-social risk behavior activities;

(b) Whether adolescents actively reject taking negative health risks when offered appealing pro-social risk behavior activities; and

(c) Whether offering pro-social risk behavior activities can reverse established negative risk behaviors.

4. *Adoption.* Adoption is a positive option for unmarried pregnant adolescents who are unable to care for their infants, yet available data indicate this option is seldom chosen. Prior research suggests that attitudes about adoption—by family members, the father of the infant, the pregnant adolescent herself, or the professional providing counseling—can often have great influence on the young mother's decision-making. Other factors of importance include the costs and benefits of the adoption decision for all involved, as well as the implications of the various types of adoption that are available. Areas of inquiry include, but are not limited to:

(a) Social, psychological, legal, and service dimensions of adoption decision-making;

(b) Social, economic, and/or psychological effects of adoption on the adolescent mother, the child, and/or the adoptive family; and

(c) Usage and differential outcomes for the adolescent mother, the child, and/or the adoptive family among formal, informal, closed and open adoption arrangements.

5. *Adolescent Parents.* The consequences of adolescent pregnancy and parenthood are well documented. Adolescent parents are less likely to complete their schooling, their employment prospects and income are concomitantly reduced, and they are more likely to be single parents. In addition, their children are more likely to have poor health status, poor educational outcomes, behavior problems, and to become adolescent parents themselves than are children born to older parents. Appropriate and adequate services for these adolescent parents and their children, however, do hold some promise for ameliorating these disadvantages. Research questions of interest include, but are not limited to:

(a) Preparation for building committed adult relationships and strong marriages;

(b) Evaluation of strategies or interventions to provide necessary support services (*e.g.*, health, education, social) to adolescent parents and their children;

(c) Factors influencing continuation of schooling for adolescent parents and/or evaluation of strategies to promote school retention or return for adolescent parents; and

(d) Factors influencing successful parenting by adolescents and/or evaluation of strategies to promote successful parenting by adolescents.

6. *Long Term Impact of Adolescent Childbearing on Family Structure.* The negative impact of adolescent pregnancy and childbearing on schooling, employment, income and health are well documented in the research literature. Another important area of inquiry, not as well studied, is the effect of adolescent parenthood on the structure and function of the young families created by this early, and most often, out-of-wedlock childbearing. Research topics of interest include, but are not limited to:

(a) The impact of adolescent out-of-wedlock childbearing on the likelihood of marriage and the stability of marriage;

(b) Types of support systems and their viability, other than marriage, for adolescent parents; and

(c) The level of satisfaction with parenting, over time, experienced by adolescent parents.

7. *Influences on Adolescent Premarital Sexual Behavior.* An important component in developing effective interventions to prevent adolescent premarital sexual activity, pregnancy and sexually transmitted infection is an understanding of the factors that influence adolescent sexual behavior. While research over the past few decades has contributed substantially to this understanding, the complexity and variability of these factors—and the interplay among them—still warrants continued study. Qualitative studies and exploration of understudied topics with the potential

of suggesting effective interventions are encouraged. For the purposes of this announcement, factors to explore include, but are not limited to:

(a) Demographic, economic, social and psychological characteristics of the adolescent;

(b) Family, peers, media, and other social factors; and

(c) Community, neighborhood, school, faith-based organizations and other social institutions.

Data Resources

When appropriate to the proposed topics, applicants may wish to consider using nationally-representative data sets such as the National Longitudinal Study of Adolescent Health (Add Health) and the National Survey of Family Growth (NSFG). (Whether this type of data set is used or not used is completely at the discretion of the applicant and will not influence funding decisions on applications submitted under this announcement.)

The Add Health survey used a longitudinal design to collect data on possible causes of health-related behaviors of adolescents in grades 7–12 and their outcomes in young adulthood. Data were collected to focus on how social contexts (families, friends, peers, schools, neighborhoods and communities) influence adolescents' health and risk behaviors. Three waves of data collection took place between 1994 and 2002, with multiple data sets available for study. See *http://www.cpc.unc.edu/addhealth* for more information about the Add Health survey.

NSFG is a cross-sectional survey of family formation and reproductive health conducted at various points over many years by the National Center for Health Statistics, Centers for Disease Control and Prevention. Each round has consisted of personal interviews with a national sample of women 15–44 years of age in the United States, but with the latest round, Cycle 6, it will include data collected from men ages 15–49 as well. NSFG is a source of data for national estimates of such variables as: rates of adolescent sexual activity; incidence of unintended pregnancy; trends in marriage, divorce, and cohabitation; and non-marital childbearing. More information on NSFG is available at *http://www.cdc.gov/nchs/nsfg.htm*.

II. Award Information

The OPA, subject to the availability of funds, intends to make available approximately $500,000 each year (fiscal years 2005, 2006, and 2007) to support an estimated 2 to 3 new research grants, up to a maximum of $250,000 each per year—including both direct and indirect costs. Section 2008(a)(3) of the Public Health Service Act stipulates that a grant for any one year period may not exceed $100,000 for the direct costs of conducting research activities. However, this limitation may be waived if we determine that exceptional circumstances warrant such waiver and that the project will have national impact. (Although section 2008(a)(3) also allows for waiver of this limitation where limited demonstration projects are conducted in order to provide data for research, the OPA does not intend to fund such projects under this announcement.) OPA intends to fund research under this announcement only if it will have national impact. Therefore, applications will be reviewed for research that will have national impact and, in cases where direct costs exceed the $100,000 limit, whether the applicant has established that those costs constitute an exceptional circumstance because they are necessary to carry out the research project.

Grants will be funded in annual increments (budget periods) and may be funded for a project period of up to three years. Funding for all approved budget periods beyond the first year is contingent upon the availability of funds, satisfactory progress on the project, and adequate stewardship of Federal funds.

Earliest anticipated start date: 4 months after application receipt date.

III. Eligibility Information

1. Eligible Applicants

Any public agency or private non-profit or for-profit organization or institution of higher education which may be located in any State, the District of Columbia, or any United States territory, commonwealth, or possession, is eligible to apply for a grant under this announcement Faith-based organizations are eligible to apply for these Adolescent Family Life research grants.

2. Cost Sharing or Matching

There is no cost sharing or matching requirement.

IV. Application and Submission Information

1. Address To Request Application Package

Applications must be submitted on the research application form PHS 398 (revised 5/01), which is available online at: *http://grants1.nih.gov/grants/oer.htm*. For additional information about obtaining the research application form PHS 398, please call (301) 594–4001.

2. Content and Form of Application Submission

Applicants are encouraged to read all PHS Form 398 instructions prior to preparing an application in response to this announcement. The instructions given are a useful guide to application preparation. Pay close attention to font size, page limits and other format specifications. However, OPA is not using the Modular Grant Application and Award Process. Applicants for OPA funding should ignore instructions concerning the Modular Grant Application and Award Process, following budget instructions otherwise provided in PHS Form 398.

When submitting the application, check ''yes'' in Block 2 of the face page and provide PAR–04–185'' for the number and ''Adolescent Family Life (AFL) Research'' as the title.

This notice seeks applications for applied research addressing Adolescent Family Life program goals. Applications should include the following:

(1) A well-organized statement of the problem to be addressed;

(2) A detailed description of the research design;

(3) The conceptual framework within which the design has been developed;

(4) The methodology to be employed;

(5) The evidence upon which the analysis will rely; and

(6) The manner in which the evidence will be analyzed.

Applications should also clearly address how findings from the proposed study will have direct application for programs designed to prevent premarital adolescent sexual activity and promote adolescent and family health and well being.

3. Submission Dates and Times

To receive consideration, applications must be received by the Center for Scientific Review, NIH, by the deadline listed in the ''Dates'' section of this announcement. Applications submitted via U.S. Postal Service will be considered as meeting the deadline if they are postmarked no later than 1 week prior to the deadline date given in the ''Dates'' section. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. As soon as possible after the receipt date, usually within 6 weeks, the principal investigator/program director and the applicant organization will receive by electronic notification the application assignment

number and the name, address, and telephone number of the Scientific Review Administrator (SRA) who will be directing the review group to which the application has been assigned. The SRA is located at the Agency for Healthcare Research and Quality (AHRQ) which is serving as the review organization for these applications. Applications that do not meet the deadline will not be accepted for review, and will be returned. Applications sent via facsimile or by electronic mail will not be accepted for review.

The application package must be submitted to: Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1040–MSC 7710, Bethesda, MD 29892–7710 (20817 for express/courier service).

Prospective applicants are asked to submit a letter of intent that includes a descriptive title of the proposed research, the name, address, and telephone number of the Principal Investigator, and the title of this Program Announcement. Although a letter of intent is not required, is not binding, and does not enter into the review of a subsequent application, the information that it contains allows OPA staff to estimate the potential review workload and plan the review. The letter of intent should be sent to Barbara Cohen, at the address listed under the ''Agency Contacts'' section below and received by the date in the ''Dates'' section of this announcement.

Applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a Duns number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the OPA Web site at: *http://opa.osophs.dhhs.gov/duns.html*.

4. Intergovernmental Review

This program is not subject to the review requirements of Executive Order 12372, Intergovernmental Review of Federal Programs.''

5. Funding Restrictions

The allowability, allocability, reasonableness and necessity of direct and indirect costs that may be charged to grants are outlined in the following documents: OMB Circular A–21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, Appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html*.

V. Application Review Information

1. Criteria

Eligible applications in response to this announcement will be reviewed according to the following criteria:

(1) Scientific Merit. Are the conceptual framework, design, methods, and analyses adequately developed and appropriate to the goals of the project?

(2) Significance. Will a scientific advance result if the project is carried out? Does the project employ novel concepts, approaches, or methods?

(3) Feasibility and Likelihood of Producing Meaningful Results. Are the plans for organizing and carrying out the project, including the responsibilities of key staff, the time line, and the proposed project period, adequately specified and appropriate?

(4) Competency of Staff. Are the principal investigator, and other key research staff, appropriately trained and well suited to carry out this project?

(5) Adequacy of Facilities and Resources. Are the facilities and resources of the applicant institution and other study sites adequate?

(6) Adequacy of Budget. Is the budget reasonable and adequate in relation to the proposed project?

2. Review and Selection Process

Applications will be reviewed, in competition with other submitted applications, by a panel of independent peer reviewers. Each of the above criteria will be addressed and considered by the reviewers in assigning the overall score. Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs on the basis of priority score, program relevance, and availability of funds.

VI. Award Administration Information

1. Award Notice

OPA does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter regarding the outcome of their applications. The official document notifying an applicant that an application has been approved and granted funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, and the terms and conditions of the grant award.

2. Administrative and National Policy Requirements

In accepting this award, the recipient stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A Notice providing information and guidance regarding the ''Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs'' was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grant recipients and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb*.

3. Reporting

Applicants must submit all required reports in a timely manner, in recommended format (to be provided), and submit a final report on the project at the completion of the project period. Submissions of all required reports may be either electronic or in hard copy.

VII. Agency Contacts

Direct inquiries regarding programmatic issues to: Barbara Cohen, Office of Population Affairs, 1101 Wootton Parkway, Suite 700, Rockville, MD 20852; (301) 594–4001; or via E-mail at *bcohen@osophs.dhhs.gov*.

Direct inquiries regarding fiscal and administrative matters to: Karen Campbell, Office of Grants Management, Office of Public Health and Science, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; (301) 594–0758; or via E-mail at *kcampbell@osophs.dhhs.gov*.

Dated: July 26, 2004.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 04–17357 Filed 7–29–04; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Early Screening and Diagnosis of Duchenne Muscular Dystrophy, Program Announcement 04216

In accordance with section 10(a)2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Early Screening and Diagnosis of Duchenne Muscular Dystrophy, Program Announcement 04216.

Times and Dates: 12:30 p.m.–1:15 p.m., August 20, 2004 (open).

1:45 p.m.–4:30 p.m., August 20, 2004 (closed).

Place: Teleconference Number: USA Toll Free 888–390–0474 Passcode 04216.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Early Screening and Diagnosis of Duchenne Muscular Dystrophy, Program Announcement 04216.

For Further Information Contact: Owen Devine, PhD, Senior Statistician, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, Mailstop E–87, Atlanta, GA 30333, telephone, 404–498–3073.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–17368 Filed 7–29–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1360–N]

RIN 0938–AM82

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Fiscal Year 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates prospective payment rates for inpatient rehabilitation facilities for Federal fiscal year (FY) 2005 as authorized under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before August 1 before each fiscal year, the classifications and weighting factors for the inpatient rehabilitation facility (IRF) case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

DATES: *Effective Date:* The updated IRF prospective payment rates are effective for discharges occurring on or after October 1, 2004, and on or before September 30, 2005 (FY 2005).

FOR FURTHER INFORMATION CONTACT: Pete Diaz, (410) 786–1235, Jeanette Kranacs, (410) 786–9385, or Robert Kuhl, (410) 786–4597.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or MasterCard number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/fr/index.html.*

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I. Background

A. Requirements of the Statute for Updating the Prospective Payment System (PPS) for Inpatient Rehabilitation Facilities (IRFs)

On August 7, 2001, we published a final rule entitled ''Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities (CMS–1069–F)'' in the **Federal Register** (66 FR 41316), that established a prospective payment system (PPS) for inpatient rehabilitation facilities (IRFs) as authorized under section 1886(j) of the Social Security Act (the Act) and codified at subpart P of part 412 of the Medicare regulations. In the August 7, 2001, final rule, we set forth the per discharge Federal rates for fiscal year (FY) 2002 that provided payment for the inpatient operating and capital costs to IRFs for the covered rehabilitation services they furnished (that is, routine, ancillary, and capital costs), but not costs of approved educational activities, bad debts, and other services or items

that are outside the scope of the IRF PPS. Covered rehabilitation services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program.

Annual updates to the IRF PPS rates are required by section 1886(j)(3)(C) of the Act. In the August 1, 2002, notice (67 FR 49928), we set forth the per discharge Federal rates for FY 2003. In the August 1, 2003, final rule (68 FR 45674), we set forth the per discharge Federal rates for FY 2004.

In this notice, we set forth the prospective payment rates applicable for IRFs for discharges occurring during FY 2005. In establishing these payment rates, we update the IRF per discharge payment rates that were published in the August 1, 2003, final rule.

Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register**, on or before August 1 of the preceding fiscal year, the classifications and weighting factors for the IRF case-mix groups (CMGs) and a description of the methodology and data used in computing the prospective payment rates for the upcoming fiscal year. The statute also permits the Secretary to adjust the classification and weighting factors for the IRF CMGs from time to time. However, we continue to perform research on potential improvements to the methods used to establish the CMGs, facility adjustments (such as, teaching, rural, and low-income adjustments), and comorbidities. Because sufficient data from this research supporting potential improvements are currently not available, we are not making any adjustments at this time. Thus, in this notice, we are using the same classifications and weighting factors for the IRF CMGs that were originally set forth in the August 7, 2001, final rule and republished in the August 1, 2003, final rule. Further, the case and facility level adjustments described in the August 7, 2001, final rule will apply to the FY 2005 IRF PPS payment rates described in this notice.

Accordingly, the CMGs, comorbidity tiers, and the corresponding relative weights presented in the August 7, 2001, final rule will be used as the basis for developing the FY 2005 IRF PPS payment rates set forth in this notice.

Specifically, we multiply an increase factor, described in section II.D of this notice, by the FY 2004 IRF standard payment amount. Then we apply the budget neutral wage adjustment to develop the FY 2005 standard payment conversion factor. The FY 2005 standard payment conversion factor is then multiplied by the relative weights presented in Table 1 of this notice, and in the August 7, 2001, final rule, to develop the FY 2005 Federal unadjusted IRF PPS payment rates.

B. Inpatient Rehabilitation Facility Prospective Payment—General Overview

Section 4421 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), as amended by section 125 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), provides for the implementation of a per discharge PPS, through new section 1886(j) of the Act, for IRFs—inpatient rehabilitation hospitals and rehabilitation units. Although a complete discussion of the IRF PPS provisions appears in the August 7, 2001, final rule, we provide below a general description of the IRF PPS.

The IRF PPS uses information from the Inpatient Rehabilitation—Patient Assessment Instrument (IRF–PAI), to classify patients into distinct CMGs based on clinical characteristics and expected resource needs. The CMGs were constructed using rehabilitation impairment categories, functional status (both motor and cognitive), age, comorbidities, and other factors that we deemed appropriate to improve the explanatory power of the groups.

Payment for services furnished to a Medicare patient consists of a predetermined, per-discharge amount for each CMG with applicable case and facility level adjustments. Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS.

The IRF PPS is comprised of 100 distinct CMGs, and each CMG is associated with a specific payment rate. The existence of a comorbidity may affect the calculation of the Federal prospective payment rate. In general, Federal prospective payment rates are established using a standard payment conversion factor. A set of relative payment weights (which account for the relative difference in resource use across the CMGs) are applied to the standard payment conversion factor. The resulting payment rate may then be modified due to the application of a number of facility level and case level adjustments. The facility level adjustments include those that account for geographic variations in wages (wage index), the percentage of low-income patients (LIPs), and location in a rural area. Case level adjustments include those that apply for transfers, short-stays, interrupted stays, outliers, and cases in which the beneficiary expires.

For cost reporting periods beginning on or after January 1, 2002, and before October 1, 2002, section 1886(j)(1) of the Act and 42 CFR 412.626 of the regulations provided that IRFs transition into the PPS by receiving a ''blended payment.'' For cost reporting periods beginning on or after January 1, 2002, and before October 1, 2002, these blended payments consisted of 66⅔ percent of the Federal IRF PPS rate and 33⅓ percent of the payment the IRF would have been paid had the IRF PPS not been implemented. However, during the transition period, an IRF with a cost reporting period beginning on or after January 1, 2002, and before October 1, 2002, could elect to bypass this blended payment and be paid 100 percent of the Federal IRF PPS rate. For cost reporting periods beginning on or after October 1, 2002 (FY 2003), payments for all IRFs consist of 100 percent of the Federal IRF PPS payment rate.

C. Classification System for the Inpatient Rehabilitation Facility Prospective Payment System

As previously stated, in this notice, we are using the same case-mix classification system that was set forth in the August 7, 2001, final rule. It is our intention to pursue the development of refinements to the case-mix classification system that will improve the ability of the PPS to more accurately pay IRFs. We awarded a contract to the Rand Corporation (RAND) to conduct additional research that will provide us with the data necessary to address the feasibility of developing and implementing refinements. When the study has been completed, we plan to review various approaches so that we can propose an appropriate methodology to develop and apply refinements. Any specific refinement proposal resulting from this research will be published in the **Federal Register** for public review and comment.

Below Table 1, Relative Weights for Case-Mix Groups (CMGs), presents the CMGs, comorbidity tiers, and the corresponding Federal relative weights. We also present the average length of stay for each CMG. As we discussed in the August 7, 2001, final rule, the average length of stay for each CMG is used to determine when an IRF discharge meets the definition of a transfer, which results in a per diem

case level adjustment. Because these data elements are not changing as a result of this notice, Table 1 shown below is identical to Table 1 that was published in the August 7, 2001, final rule (66 FR 41394–41396), and the August 1, 2003, final rule (68 FR 45704–45708). The relative weights reflect the inclusion of cases with an interruption of stay (patient returns on day of discharge or either of the next 2 days). The methodology we used to construct the data elements in Table 1 is described in detail in the August 7, 2001, final rule (66 FR 41350–41353).

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Table 1. – Relative Weights for Case-Mix Groups (CMGs)

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke M=69-84 and C=23-35	0.4778	0.4279	0.4078	0.3859	10	9	6	8
0102	Stroke M=59-68 and C=23-35	0.6506	0.5827	0.5553	0.5255	11	12	10	10
0103	Stroke M=59-84 and C=5-22	0.8296	0.7430	0.7080	0.6700	14	12	12	12
0104	Stroke M=53-58	0.9007	0.8067	0.7687	0.7275	17	13	12	13
0105	Stroke M=47-52	1.1339	1.0155	0.9677	0.9158	16	17	15	15
0106	Stroke M=42-46	1.3951	1.2494	1.1905	1.1267	18	18	18	18
0107	Stroke M=39-41	1.6159	1.4472	1.3790	1.3050	17	20	21	21
0108	Stroke M=34-38 and A>=83	1.7477	1.5653	1.4915	1.4115	25	27	22	23
0109	Stroke M=34-38 and A<=82	1.8901	1.6928	1.6130	1.5265	24	24	22	24
0110	Stroke M=12-33 and A>=89	2.0275	1.8159	1.7303	1.6375	29	25	27	26
0111	Stroke M=27-33 and A=82-88	2.0889	1.8709	1.7827	1.6871	29	26	24	27
0112	Stroke M=12-26 and A=82-88	2.4782	2.2195	2.1149	2.0015	40	33	30	31
0113	Stroke M=27-33 and A<=81	2.2375	2.0040	1.9095	1.8071	30	27	27	28

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0114	Stroke M=12-26 and A<=81	2.7302	2.4452	2.3300	2.2050	37	34	32	33
0201	Traumatic brain injury M=52-84 and C=24-35	0.7689	0.7276	0.6724	0.6170	13	14	14	11
0202	Traumatic brain injury M=40-51 and C=24-35	1.1181	1.0581	0.9778	0.8973	18	16	17	16
0203	Traumatic brain injury M=40-84 and C=5-23	1.3077	1.2375	1.1436	1.0495	19	20	19	18
0204	Traumatic brain injury M=30-39	1.6534	1.5646	1.4459	1.3269	24	23	22	22
0205	Traumatic brain injury M=12-29	2.5100	2.3752	2.1949	2.0143	44	36	35	31
0301	Non-traumatic brain injury M=51-84	0.9655	0.8239	0.7895	0.7195	14	14	12	13
0302	Non-traumatic brain injury M=41-50	1.3678	1.1672	1.1184	1.0194	19	17	17	16
0303	Non-traumatic brain injury M=25-40	1.8752	1.6002	1.5334	1.3976	23	23	22	22
0304	Non-traumatic brain injury M=12-24	2.7911	2.3817	2.2824	2.0801	44	32	34	31
0401	Traumatic spinal cord injury M=50-84	0.9282	0.8716	0.8222	0.6908	15	15	16	14
0402	Traumatic spinal cord injury M=36-49	1.4211	1.3344	1.2588	1.0576	21	18	22	19
0403	Traumatic spinal cord injury M=19-35	2.3485	2.2052	2.0802	1.7478	32	32	31	30
0404	Traumatic spinal cord injury M=12-18	3.5227	3.3078	3.1203	2.6216	46	43	62	40
0501	Non-traumatic spinal cord injury M=51-84 and C=30-35	0.7590	0.6975	0.6230	0.5363	12	13	10	10
0502	Non-traumatic spinal cord injury M=51-84 and C=5-29	0.9458	0.8691	0.7763	0.6683	15	17	10	12
0503	Non-traumatic spinal cord injury M=41-50	1.1613	1.0672	0.9533	0.8206	17	17	15	14
0504	Non-traumatic spinal cord injury M=34-40	1.6759	1.5400	1.3757	1.1842	23	21	21	19
0505	Non-traumatic spinal cord injury M=12-33	2.5314	2.3261	2.0778	1.7887	31	31	29	28
0601	Neurological M=56-84	0.8794	0.6750	0.6609	0.5949	14	13	12	12
0602	Neurological M=47-55	1.1979	0.9195	0.9003	0.8105	15	15	14	15
0603	Neurological M=36-46	1.5368	1.1796	1.1550	1.0397	21	18	18	18
0604	Neurological M=12-35	2.0045	1.5386	1.5065	1.3561	31	24	25	23
0701	Fracture of lower extremity M=52-84	0.7015	0.7006	0.6710	0.5960	13	13	12	11
0702	Fracture of lower extremity M=46-51	0.9264	0.9251	0.8861	0.7870	15	15	16	14
0703	Fracture of lower extremity M=42-45	1.0977	1.0962	1.0500	0.9326	18	17	17	16

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0704	Fracture of lower extremity M=38-41	1.2488	1.2471	1.1945	1.0609	14	20	19	18
0705	Fracture of lower extremity M=12-37	1.4760	1.4740	1.4119	1.2540	20	22	22	21
0801	Replacement of lower extremity joint M=58-84	0.4909	0.4696	0.4518	0.3890	9	9	8	8
0802	Replacement of lower extremity joint M=55-57	0.5667	0.5421	0.5216	0.4490	10	10	9	9
0803	Replacement of lower extremity joint M=47-54	0.6956	0.6654	0.6402	0.5511	9	11	11	10
0804	Replacement of lower extremity joint M=12-46 and C=32-35	0.9284	0.8881	0.8545	0.7356	15	14	14	12
0805	Replacement of lower extremity joint M=40-46 and C=5-31	1.0027	0.9593	0.9229	0.7945	16	16	14	14
0806	Replacement of lower extremity joint M=12-39 and C=5-31	1.3681	1.3088	1.2592	1.0840	21	20	19	18
0901	Other orthopedic M=54-84	0.6988	0.6390	0.6025	0.5213	12	11	11	11
0902	Other orthopedic M=47-53	0.9496	0.8684	0.8187	0.7084	15	15	14	13
0903	Other orthopedic M=38-46	1.1987	1.0961	1.0334	0.8942	18	18	17	16
0904	Other orthopedic M=12-37	1.6272	1.4880	1.4029	1.2138	23	23	23	21
1001	Amputation, lower extremity M=61-84	0.7821	0.7821	0.7153	0.6523	13	13	12	13
1002	Amputation, lower extremity M=52-60	0.9998	0.9998	0.9144	0.8339	15	15	14	15
1003	Amputation, lower extremity M=46-51	1.2229	1.2229	1.1185	1.0200	18	17	17	18
1004	Amputation, lower extremity M=39-45	1.4264	1.4264	1.3046	1.1897	20	20	19	19
1005	Amputation, lower extremity M=12-38	1.7588	1.7588	1.6086	1.4670	21	25	23	23
1101	Amputation, non-lower extremity M=52-84	1.2621	0.7683	0.7149	0.6631	18	11	13	12
1102	Amputation, non-lower extremity M=38-51	1.9534	1.1892	1.1064	1.0263	25	18	17	18
1103	Amputation, non-lower extremity M=12-37	2.6543	1.6159	1.5034	1.3945	33	23	22	25
1201	Osteoarthritis M=55-84 and C=34-35	0.7219	0.5429	0.5103	0.4596	13	10	11	9
1202	Osteoarthritis M=55-84 and C=5-33	0.9284	0.6983	0.6563	0.5911	16	11	13	13

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
1203	Osteoarthritis M=48-54	1.0771	0.8101	0.7614	0.6858	18	15	14	13
1204	Osteoarthritis M=39-47	1.3950	1.0492	0.9861	0.8882	22	19	16	17
1205	Osteoarthritis M=12-38	1.7874	1.3443	1.2634	1.1380	27	21	21	20
1301	Rheumatoid, other arthritis M=54-84	0.7719	0.6522	0.6434	0.5566	13	14	13	11
1302	Rheumatoid, other arthritis M=47-53	0.9882	0.8349	0.8237	0.7126	16	14	14	14
1303	Rheumatoid, other arthritis M=36-46	1.3132	1.1095	1.0945	0.9469	20	18	16	17
1304	Rheumatoid, other arthritis M=12-35	1.8662	1.5768	1.5555	1.3457	25	25	29	22
1401	Cardiac M=56-84	0.7190	0.6433	0.5722	0.5156	15	12	11	11
1402	Cardiac M=48-55	0.9902	0.8858	0.7880	0.7101	13	15	13	13
1403	Cardiac M=38-47	1.2975	1.1608	1.0325	0.9305	21	19	16	16
1404	Cardiac M=12-37	1.8013	1.6115	1.4335	1.2918	30	24	21	20
1501	Pulmonary M=61-84	0.8032	0.7633	0.6926	0.6615	15	13	13	13
1502	Pulmonary M=48-60	1.0268	0.9758	0.8855	0.8457	17	17	14	15
1503	Pulmonary M=36-47	1.3242	1.2584	1.1419	1.0906	21	20	18	18
1504	Pulmonary M=12-35	2.0598	1.9575	1.7763	1.6965	30	28	30	26
1601	Pain syndrome M=45-84	0.8707	0.8327	0.7886	0.6603	15	14	13	13
1602	Pain syndrome M=12-44	1.3320	1.2739	1.2066	1.0103	21	20	20	18
1701	Major multiple trauma without brain or spinal cord injury M=46-84	0.9996	0.9022	0.8138	0.7205	16	14	11	13
1702	Major multiple trauma without brain or spinal cord injury M=33-45	1.4755	1.3317	1.2011	1.0634	21	21	20	18
1703	Major multiple trauma without brain or spinal cord injury M=12-32	2.1370	1.9288	1.7396	1.5402	33	28	27	24
1801	Major multiple trauma with brain or spinal cord injury M=45-84 and C=33-35	0.7445	0.7445	0.6862	0.6282	12	12	12	10
1802	Major multiple trauma with brain or spinal cord injury M=45-84 and C=5-32	1.0674	1.0674	0.9838	0.9007	16	16	16	16
1803	Major multiple trauma with brain or spinal cord injury M=26-44	1.6350	1.6350	1.5069	1.3797	22	25	20	22

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
1804	Major multiple trauma with brain or spinal cord injury M=12-25	2.9140	2.9140	2.6858	2.4589	41	29	40	40
1901	Guillian Barre M=47-84	1.1585	1.0002	0.9781	0.8876	15	15	16	15
1902	Guillian Barre M=31-46	2.1542	1.8598	1.8188	1.6505	27	27	27	24
1903	Guillian Barre M=12-30	3.1339	2.7056	2.6459	2.4011	41	35	30	40
2001	Miscellaneous M=54-84	0.8371	0.7195	0.6705	0.6029	12	13	11	12
2002	Miscellaneous M=45-53	1.1056	0.9502	0.8855	0.7962	15	15	14	14
2003	Miscellaneous M=33-44	1.4639	1.2581	1.1725	1.0543	20	18	18	18
2004	Miscellaneous M=12-32 and A>=82	1.7472	1.5017	1.3994	1.2583	30	22	21	22
2005	Miscellaneous M=12-32 and A<=81	2.0799	1.7876	1.6659	1.4979	33	25	24	24
2101	Burns M=46-84	1.0357	0.9425	0.8387	0.8387	18	18	15	16
2102	Burns M=12-45	2.2508	2.0482	1.8226	1.8226	31	26	26	29
5001	Short-stay cases, length of stay is 3 days or fewer				0.1651				3
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.4279				8
5102	Expired, orthopedic, length of stay is 14 days or more				1.2390				23
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.5436				9
5104	Expired, not orthopedic, length of stay is 16 days or more				1.7100				28

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D. Inpatient Rehabilitation Facility Market Basket Index and Labor-Related Share

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index. Accordingly, in updating the FY 2005 payment rates set forth in this notice, we apply an appropriate increase factor to the FY 2004 IRF PPS payment rates that is equal to the IRF market basket. In constructing the IRF market basket, we use the methodology set forth in the August 1, 2003 final rule (68 FR 45685–45688). For this notice, the projected FY 2005 IRF market basket increase factor is 3.1 percent.

In addition, we have used the methodology described in the August 1, 2003 final rule (68 FR 45688–45689) to update the labor-related share for FY 2005. In FY 2004, we updated the 1992 market basket data to 1997. We believe that the 1997 market basket data is still the most accurate base year data available. Therefore, for FY 2005, we continue to use the 1997-based excluded hospital market basket with capital costs to determine the FY 2005 labor-related share. As shown in Table 2 the total FY 2005 labor-related share is 72.359 percent.

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TABLE 2. – FY 2005 LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost Category	FY 2005 Labor-Related Relative Importance
Wages and salaries	48.662
Employee benefits	11.249
Professional fees	4.535
All other labor intensive services	4.508
SUBTOTAL:	68.954
Labor-related share of capital costs	3.405
TOTAL:	72.359

E. Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs that are attributable to wages and wage-related costs for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. Not later than October 1, 2001, and at least every 36 months thereafter, the Secretary is required to update the factor under the preceding sentence on the basis of information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act must be made in a budget neutral manner.

In the August 1, 2003, final rule, we established an IRF wage index based on FY 1999 acute care hospital wage data to adjust the FY 2004 IRF payment rates. For the FY 2005 IRF PPS payment rates set forth in this notice, we are using an IRF wage index based on more recent FY 2000 acute care hospital wage data. The methodology for calculating the wage index remains the same and can be found at 66 FR 41358.

To calculate the wage-adjusted facility payments for the payment rates set forth in this notice, the Federal prospective payment is multiplied by the labor-related share (72.359 percent) to determine the labor-related portion of the Federal prospective payments. This labor-related portion is then multiplied by the applicable IRF wage index shown in Table 3A for urban areas and Table 3B for rural areas.

TABLE 3A – URBAN WAGE INDEX

Urban Area (Constituent Counties or County Equivalents)	Wage Index
0040 Abilene, TX	0.7627
Taylor, TX	
0060 Aguadilla, PR	0.4306
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9246
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0863
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8489
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9300
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8019
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9721
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.8806
Blair, PA	
0320 Amarillo, TX	0.8986
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2216
Anchorage, AK	
0440 Ann Arbor, MI	1.1074
Lenawee, MI	
Livingston, MI	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Washtenaw, MI	
0450 Anniston, AL	0.8090
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9035
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4155
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9720
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9818
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0130
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.0795
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8494
Lee, AL	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
0600 Augusta-Aiken, GA-SC	0.9625
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9609
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9810
Kern, CA	
0720 Baltimore, MD	0.9919
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9904
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.2956
Barnstable, MA	
0760 Baton Rouge, LA	0.8406
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8424
Hardin, TX	
Jefferson, TX	
Orange, TX	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
0860 Bellingham, WA	1.1757
Whatcom, WA	
0870 Benton Harbor, MI	0.8935
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1692
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.8961
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.9029
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8428
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9212
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7965
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8662
Monroe, IN	
1040 Bloomington-Normal, IL	0.8832
McLean, IL	
1080 Boise City, ID	0.9209
Ada, ID	
Canyon, ID	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1233
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0049
Boulder, CO	
1145 Brazoria, TX	0.8137
Brazoria, TX	
1150 Bremerton, WA	1.0580
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	1.0303
Cameron, TX	
1260 Bryan-College Station, TX	0.9019
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9604
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9704
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4158
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.9071
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9095
Natrona, WY	
1360 Cedar Rapids, IA	0.8874
Linn, IA	
1400 Champaign-Urbana, IL	0.9907
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9332
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8880
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9730
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0025
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.9086
Catoosa, GA	
Dade, GA	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8796
Laramie, WY	
1600 Chicago, IL	1.0892
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0193
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9413
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8244
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9671
Ashtabula, OH	
Geauga, OH	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9833
El Paso, CO	
1740 Columbia, MO	0.8695
Boone, MO	
1760 Columbia, SC	0.8902
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8694
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9648
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8521
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1516
Benton, OR	
1900 Cumberland, MD-WV	0.8200
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9974
Collin, TX	
Dallas, TX	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.9035
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8985
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9518
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9060
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8828
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8161
Macon, IL	
2080 Denver, CO	1.0837
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9106
Dallas, IA	
Polk, IA	
Warren, IA	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
2160 Detroit, MI	1.0101
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7741
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9805
Kent, DE	
2200 Dubuque, IA	0.8886
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0171
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0934
Dutchess, NY	
2290 Eau Claire, WI	0.9064
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9196
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9783
Elkhart, IN	
2335 Elmira, NY	0.8377
Chemung, NY	
2340 Enid, OK	0.8559
Garfield, OK	
2360 Erie, PA	0.8601
Erie, PA	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
2400 Eugene-Springfield, OR	1.1456
Lane, OR	
2440 Evansville-Henderson, IN-KY	0.8429
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9797
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8986
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8396
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.1333
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0858
Genesee, MI	
2650 Florence, AL	0.7747
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8709
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0108
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0163
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9816
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0008

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.8424
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8966
Okaloosa, FL	
2760 Fort Wayne, IN	0.9585
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9359
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0142
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8206
Etowah, AL	
2900 Gainesville, FL	0.9693
Alachua, FL	
2920 Galveston-Texas City, TX	0.9279
Galveston, TX	
2960 Gary, IN	0.9410
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8475

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8622
Wayne, NC	
2985 Grand Forks, ND-MN	0.8636
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9633
Mesa, CO.	
3000 Grand Rapids-Muskegon-Holland, MI	0.9469
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8809
Cascade, MT	
3060 Greeley, CO	0.9372
Weld, CO	
3080 Green Bay, WI	0.9461
Brown, WI	
3120 Greensboro-Winston-Salem- High Point, NC	0.9166
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9098
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9335

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9172
Washington, MD	
3200 Hamilton-Middletown, OH	0.9214
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9164
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1555
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7307
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9242
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1098
Honolulu, HI	
3350 Houma, LA	0.7771
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9834

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9595
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.9245
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9916
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9548
Johnson, IA	
3520 Jackson, MI	0.8986
Jackson, MI	
3560 Jackson, MS	0.8357
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8984
Chester, TN	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Madison, TN	
3600 Jacksonville, FL	0.9529
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.8544
Onslow, NC	
3610 Jamestown, NY	0.7762
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.9282
Rock, WI	
3640 Jersey City, NJ	1.1115
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8253
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8158
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7794
Craighead, AR	
3710 Joplin, MO	0.8681
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battle Creek, MI	1.0500
Calhoun, MI	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	1.0419
Kankakee, IL	
3760 Kansas City, KS-MO	0.9715
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9761
Kenosha, WI	
3810 Killeen-Temple, TX	0.9159
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8820
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9045
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9247
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8207

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9036
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7841
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8811
Polk, FL	
4000 Lancaster, PA	0.9282
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9714
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8091
Webb, TX	
4100 Las Cruces, NM	0.8688
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.1528
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.0000
Douglas, KS	
4200 Lawton, OK	0.8267
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9383

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Androscoggin, ME	
4280 Lexington, KY	0.8685
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9522
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	1.0033
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8923
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.9113
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1795
Los Angeles, CA	
4520 Louisville, KY-IN	0.9242
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8272

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Lubbock, TX	
4640 Lynchburg, VA	0.9134
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8953
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0264
Dane, WI	
4800 Mansfield, OH	0.9180
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4795
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8381
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0772
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9776
Brevard, Fl	
4920 Memphis, TN-AR-MS	0.9009

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9692
Merced, CA	
5000 Miami, FL	0.9894
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1366
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9988
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN-WI	1.1001
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.8718
Missoula, MT	
5160 Mobile, AL	0.7994

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.1275
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0956
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.7922
Ouachita, LA	
5240 Montgomery, AL	0.7907
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.8775
Delaware, IN	
5330 Myrtle Beach, SC	0.9112
Horry, SC	
5345 Naples, FL	0.9790
Collier, FL	
5360 Nashville, TN	0.9855
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3140
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2385
Fairfield, CT	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
New Haven, CT	
5523 New London-Norwich, CT	1.1631
New London, CT	
5560 New Orleans, LA	0.9174
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4018
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1518
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1509
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC	0.8619
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.4921
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9728
Marion, FL	
5800 Odessa-Midland, TX	0.9327
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8984
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0963
Thurston, WA	
5920 Omaha, NE-IA	0.9745
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1372
Orange, CA	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
5960 Orlando, FL	0.9654
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8374
Daviess, KY	
6015 Panama City, FL	0.8202
Bay, FL	
6020 Parkersburg-Marietta, WV-OH	0.8039
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8753
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8734
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA-NJ	1.0883
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	1.0129
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7865
Jefferson, AR	
6280 Pittsburgh, PA	0.8901

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0276
Berkshire, MA	
6340 Pocatello, ID	0.9042
Bannock, ID	
6360 Ponce, PR	0.4708
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9949
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.1213
Clackamas, OR.	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0977
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9976
Utah, UT	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
6560 Pueblo, CO	0.8778
Pueblo, CO	
6580 Punta Gorda, FL	0.9510
Charlotte, FL	
6600 Racine, WI	0.8814
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9959
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8806
Pennington, SD	
6680 Reading, PA	0.9133
Berks, PA	
6690 Redding, CA	1.1352
Shasta, CA	
6720 Reno, NV	1.0682
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0609
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9349
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1348
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8700
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1739
Olmsted, MN	
6840 Rochester, NY	0.9430
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9666
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9076
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1845
El Dorado, CA	
Placer, CA	
Sacramento, CA	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
6960 Saginaw-Bay City-Midland, MI	1.0032
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9506
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.0000
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO-IL	0.9033
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0482
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4339
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9913
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8535
Tom Green, TX	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
7240 San Antonio, TX	0.8870
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1147
San Diego, CA	
7360 San Francisco, CA	1.4514
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4626
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4909
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1429
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0441
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.2942
Santa Cruz, CA	
7490 Santa Fe, NM	1.0653
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2877
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9964
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9472
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton--Wilkes-Barre--Hazleton, PA	0.8412
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1562
Island, WA	
King, WA	
Snohomish, WA	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
7610 Sharon, PA	0.7751
Mercer, PA	
7620 Sheboygan, WI	0.8624
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9700
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9083
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.8993
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9309
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9821
St. Joseph, IN	
7840 Spokane, WA	1.0901
Spokane, WA	
7880 Springfield, IL	0.8944
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8457
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0543
Hampden, MA	
Hampshire, MA	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
8050 State College, PA	0.8740
Centre, PA	
8080 Steubenville-Weirton, OH-WV	0.8398
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0404
San Joaquin, CA	
8140 Sumter, SC	0.8243
Sumter, SC	
8160 Syracuse, NY	0.9412
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1116
Pierce, WA	
8240 Tallahassee, FL	0.8520
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9103
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8325
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8150
Miller, AR	
Bowie, TX	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
8400 Toledo, OH	0.9381
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9108
Shawnee, KS	
8480 Trenton, NJ	1.0517
Mercer, NJ	
8520 Tucson, AZ	0.8981
Pima, AZ	
8560 Tulsa, OK	0.9185
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8212
Tuscaloosa, AL	
8640 Tyler, TX	0.9404
Smith, TX	
8680 Utica-Rome, NY	0.8403
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3377
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1064
Ventura, CA	
8750 Victoria, TX	0.8184
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0405
Cumberland, NJ	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
8780 Visalia-Tulare-Porterville, CA	0.9856
Tulare, CA	
8800 Waco, TX	0.8394
McLennan, TX	
8840 Washington, DC-MD-VA-WV	1.0904
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8366
Black Hawk, IA	
8940 Wausau, WI	0.9692
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9798
Palm Beach, FL	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
9000 Wheeling, OH-WV	0.7494
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9238
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8341
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8158
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.0882
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9563
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0372
Yakima, WA	
9270 Yolo, CA	0.9204
Yolo, CA	
9280 York, PA	0.9119
York, PA	
9320 Youngstown-Warren, OH	0.9214
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	

Urban Area (Constituent Counties or County Equivalents)	Wage Index
9340 Yuba City, CA	1.0196
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8895
Yuma, AZ	

TABLE 3B--WAGE INDEX FOR RURAL AREAS

Rural Area	Wage Index
Alabama	0.7492
Alaska	1.1886
Arizona	0.9270
Arkansas	0.7734
California	0.9967
Colorado	0.9328
Connecticut	1.2183
Delaware	0.9557
Florida	0.8855
Georgia	0.8369
Guam	
Hawaii	0.9958
Idaho	0.8974
Illinois	0.8254
Indiana	0.8824
Iowa	0.8416
Kansas	0.8074
Kentucky	0.7973
Louisiana	0.7451
Maine	0.8812
Maryland	0.9125
Massachusetts	1.0432
Michigan	0.8877
Minnesota	0.9330
Mississippi	0.7778
Missouri	0.8056
Montana	0.8800
Nebraska	0.8822
Nevada	0.9806
New Hampshire	1.0030

Rural Area	Wage Index
New Jersey 1/	
New Mexico	0.8270
New York	0.8526
North Carolina	0.8456
North Dakota	0.7778
Ohio	0.8820
Oklahoma	0.7537
Oregon	0.9994
Pennsylvania	0.8378
Puerto Rico	0.4018
Rhode Island 1/	
South Carolina	0.8498
South Dakota	0.8195
Tennessee	0.7886
Texas	0.7780
Utah	0.8974
Vermont	0.9307
Virginia	0.8498
Virgin Islands	
Washington	1.0388
West Virginia	0.8018
Wisconsin	0.9304
Wyoming	0.9110

1/ All counties within the State are classified urban.

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In addition, because any adjustment or update to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner, we have calculated a budget neutral wage adjustment factor as established in the August 1, 2003 final rule and codified at 42 CFR 412.624(e)(1). We use the following steps to ensure that the FY 2005 IRF standard payment conversion factor reflects the update to the wage indices and to the labor-related share in a budget neutral manner:

Step 1. We determine the total amount of the FY 2004 IRF PPS rates using the FY 2004 standard payment conversion factor and the labor-related share and the wage indices from FY 2004 (as published in the August 1, 2003 final rule).

Step 2. We then calculate the total amount of IRF PPS payments using the FY 2004 standard payment conversion factor and the updated FY 2005 labor-related share and wage indices described above.

Step 3. We divide the amount calculated in step 1 by the amount calculated in step 2, which equals the FY 2005 budget neutral wage adjustment factor of 1.0035.

Step 4. We then apply the FY 2005 budget neutral wage adjustment factor from step 3 to the FY 2004 IRF PPS standard payment conversion factor after the application of the market basket update, described above, to determine the FY 2005 standard payment conversion factor.

F. Update of Payment Rates Under the Prospective Payment System for Inpatient Rehabilitation Facilities for Fiscal Year 2005

Once we calculate the IRF market basket increase factor and determine the budget neutral wage adjustment factor, this calculation enables us to determine the updated Federal prospective payments for FY 2005. In accordance with § 412.624(c)(3)(ii), we apply the market basket increase factor (3.1 percent) to the standard payment conversion factor for FY 2004 ($12,525) which equals $12,913. Then, we apply the budget neutral wage adjustment of 1.0035 to $12,913, which results in a final updated standard payment conversion factor for FY 2005 of $12,958. The FY 2005 standard payment conversion factor is applied to each CMG weight shown in Table 1, Relative Weights for Case-Mix Groups (CMGs), to compute the unadjusted IRF prospective payment rates for FY 2005 shown in Table 4.

Table 4, Federal Prospective Payments for Case-Mix Groups (CMGs) for FY 2005, displays the CMGs, and the comorbidity tiers, for FY 2005.

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TABLE 4.— FISCAL YEAR 2005 FEDERAL PROSPECTIVE PAYMENTS FOR CASE-MIX GROUPS (CMGS)

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidities
0101	$6,191.33	$5,544.73	$5,284.27	$5,000.49
0102	$8,430.47	$7,550.63	$7,195.58	$6,809.43
0103	$10,749.96	$9,627.79	$9,174.26	$8,681.86
0104	$11,671.27	$10,453.22	$9,960.81	$9,426.95
0105	$14,693.08	$13,158.85	$12,539.46	$11,866.94
0106	$18,077.71	$16,189.73	$15,426.50	$14,599.78
0107	$20,938.83	$18,752.82	$17,869.08	$16,910.19
0108	$22,646.70	$20,283.16	$19,326.86	$18,290.22
0109	$24,491.92	$21,935.30	$20,901.25	$19,780.39
0110	$26,272.35	$23,530.43	$22,421.23	$21,218.73
0111	$27,067.97	$24,243.12	$23,100.23	$21,861.44
0112	$32,112.52	$28,760.28	$27,404.87	$25,935.44
0113	$28,993.53	$25,967.83	$24,743.30	$23,416.40
0114	$35,377.93	$31,684.90	$30,192.14	$28,572.39
0201	$9,963.41	$9,428.24	$8,712.96	$7,995.09
0202	$14,488.34	$13,710.86	$12,670.33	$11,627.21
0203	$16,945.18	$16,035.53	$14,818.77	$13,599.42
0204	$21,424.76	$20,274.09	$18,735.97	$17,193.97
0205	$32,524.58	$30,777.84	$28,441.51	$26,101.30
0301	$12,510.95	$10,676.10	$10,230.34	$9,323.28
0302	$17,723.95	$15,124.58	$14,492.23	$13,209.39
0303	$24,298.84	$20,735.39	$19,869.80	$18,110.10
0304	$36,167.07	$30,862.07	$29,575.34	$26,953.94
0401	$12,027.62	$11,294.19	$10,654.07	$8,951.39

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidities
0402	$18,414.61	$17,291.16	$16,311.53	$13,704.38
0403	$30,431.86	$28,574.98	$26,955.23	$22,647.99
0404	$45,647.15	$42,862.47	$40,432.85	$33,970.69
0501	$9,835.12	$9,038.21	$8,072.83	$6,949.38
0502	$12,255.68	$11,261.80	$10,059.30	$8,659.83
0503	$15,048.13	$13,828.78	$12,352.86	$10,633.33
0504	$21,716.31	$19,955.32	$17,826.32	$15,344.86
0505	$32,801.88	$30,141.60	$26,924.13	$23,177.97
0601	$11,395.27	$8,746.65	$8,563.94	$7,708.71
0602	$15,522.39	$11,914.88	$11,666.09	$10,502.46
0603	$19,913.85	$15,285.26	$14,966.49	$13,472.43
0604	$25,974.31	$19,937.18	$19,521.23	$17,572.34
0701	$9,090.04	$9,078.37	$8,694.82	$7,722.97
0702	$12,004.29	$11,987.45	$11,482.08	$10,197.95
0703	$14,224.00	$14,204.56	$13,605.90	$12,084.63
0704	$16,181.95	$16,159.92	$15,478.33	$13,747.14
0705	$19,126.01	$19,100.09	$18,295.40	$16,249.33
0801	$6,361.08	$6,085.08	$5,854.42	$5,040.66
0802	$7,343.30	$7,024.53	$6,758.89	$5,818.14
0803	$9,013.58	$8,622.25	$8,295.71	$7,141.15
0804	$12,030.21	$11,508.00	$11,072.61	$9,531.90
0805	$12,992.99	$12,430.61	$11,958.94	$10,295.13
0806	$17,727.84	$16,959.43	$16,316.71	$14,046.47
0901	$9,055.05	$8,280.16	$7,807.20	$6,755.01
0902	$12,304.92	$11,252.73	$10,608.71	$9,179.45
0903	$15,532.75	$14,203.26	$13,390.80	$11,587.04
0904	$21,085.26	$19,281.50	$18,178.78	$15,728.42
1001	$10,134.45	$10,134.45	$9,268.86	$8,452.50
1002	$12,955.41	$12,955.41	$11,848.80	$10,805.68
1003	$15,846.34	$15,846.34	$14,493.52	$13,217.16
1004	$18,483.29	$18,483.29	$16,905.01	$15,416.13
1005	$22,790.53	$22,790.53	$20,844.24	$19,009.39
1101	$16,354.29	$9,955.63	$9,263.67	$8,592.45
1102	$25,312.16	$15,409.65	$14,336.73	$13,298.80

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidities
1103	$34,394.42	$20,938.83	$19,481.06	$18,069.93
1201	$9,354.38	$7,034.90	$6,612.47	$5,955.50
1202	$12,030.21	$9,048.57	$8,504.34	$7,659.47
1203	$13,957.06	$10,497.28	$9,866.22	$8,886.60
1204	$18,076.41	$13,595.53	$12,777.88	$11,509.30
1205	$23,161.13	$17,419.44	$16,371.14	$14,746.20
1301	$10,002.28	$8,451.21	$8,337.18	$7,212.42
1302	$12,805.10	$10,818.63	$10,673.50	$9,233.87
1303	$17,016.45	$14,376.90	$14,182.53	$12,269.93
1304	$24,182.22	$20,432.17	$20,156.17	$17,437.58
1401	$9,316.80	$8,335.88	$7,414.57	$6,681.14
1402	$12,831.01	$11,478.20	$10,210.90	$9,201.48
1403	$16,813.01	$15,041.65	$13,379.14	$12,057.42
1404	$23,341.25	$20,881.82	$18,575.29	$16,739.14
1501	$10,407.87	$9,890.84	$8,974.71	$8,571.72
1502	$13,305.27	$12,644.42	$11,474.31	$10,958.58
1503	$17,158.98	$16,306.35	$14,796.74	$14,131.99
1504	$26,690.89	$25,365.29	$23,017.30	$21,983.25
1601	$11,282.53	$10,790.13	$10,218.68	$8,556.17
1602	$17,260.06	$16,507.20	$15,635.12	$13,091.47
1701	$12,952.82	$11,690.71	$10,545.22	$9,336.24
1702	$19,119.53	$17,256.17	$15,563.85	$13,779.54
1703	$27,691.25	$24,993.39	$22,541.74	$19,957.91
1801	$9,647.23	$9,647.23	$8,891.78	$8,140.22
1802	$13,831.37	$13,831.37	$12,748.08	$11,671.27
1803	$21,186.33	$21,186.33	$19,526.41	$17,878.15
1804	$37,759.61	$37,759.61	$34,802.60	$31,862.43
1901	$15,011.84	$12,960.59	$12,674.22	$11,501.52
1902	$27,914.12	$24,099.29	$23,568.01	$21,387.18
1903	$40,609.08	$35,059.16	$34,285.57	$31,113.45
2001	$10,847.14	$9,323.28	$8,688.34	$7,812.38
2002	$14,326.36	$12,312.69	$11,474.31	$10,317.16
2003	$18,969.22	$16,302.46	$15,193.26	$13,661.62
2004	$22,640.22	$19,459.03	$18,133.43	$16,305.05

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidities
2005	$26,951.34	$23,163.72	$21,58[illegible]6.73	$19,409.79
2101	$13,420.60	$12,212.92	$10,8[illegible]7.87	$10,867.87
2102	$29,165.87	$26,540.58	$23,61[illegible]7.25	$23,617.25
5001				$2,139.37
5101				$5,544.73
5102				$16,054.96
5103				$7,043.97
5104				$22,158.18

G. Examples of Computing the Total Adjusted Inpatient Rehabilitation Facility Prospective Payments

We will adjust the Federal prospective payments, described above, to account for geographic wage variation, low-income patients and, if applicable, facilities located in rural areas.

To illustrate the methodology that we will use for adjusting the Federal prospective payments, we provide the following example. One beneficiary is in rehabilitation facility A and another beneficiary is in rehabilitation facility B.

Rehabilitation facility A's disproportionate share hospital (DSH) adjustment is 5 percent, with a low-income patient (LIP) adjustment of 1.0239 and a wage index of 0.8946, and the facility is located in a rural area with an adjustment of 1.1914 percent.

Rehabilitation facility B's DSH is 15 percent, with a LIP adjustment of 1.0700 and a wage index of 1.4414, and the facility is located in an urban area. Both Medicare beneficiaries are classified to CMG 0111 (without comorbidities). This CMG represents a stroke with motor scores in the 27 to 33 range and the patient is between 82 and 88 years old. To calculate each IRF's total adjusted Federal prospective payment, we compute the wage-adjusted Federal prospective payment and multiply the result by the appropriate LIP adjustment and the rural adjustment (if applicable). The following table illustrates the components of the adjusted payment calculation.

TABLE 5.--EXAMPLES OF COMPUTING AN IRF'S FEDERAL PROSPECTIVE PAYMENT

	Facility A	Facility B
Federal Prospective Payment..	$ 21861.44	$ 21861.44
Labor Share.....	x .72359	x .72359
Labor Portion of Federal Payment	= $ 15818.72	= $ 15818.72
Wage Index.....	x 0.8946	x 1.4414
Wage-Adjusted Amount.....	= $ 14151.43	= $ 22801.10
Non-Labor Amount.....	+ $ 6042.72	+ $ 6042.72
Wage-Adjusted Federal Payment.	$ 20194.15	$ 28843.82
Rural Adjustment.....	x 1.1914	x 1.0000
Subtotal.....	= $ 24059.31	= $ 28843.82
LIP Adjustment.....	x 1.0239	x 1.0700
Total FY 2005 Adjusted Federal Prospective Payment	= $ 24634.33	= $ 30862.89

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Thus, the adjusted payment for facility A will be $ 24,634.33, and the adjusted payment for facility B will be $ 30,862.89.

The FY 2005 IRF PPS rates set forth in this notice will apply to all discharges on or after October 1, 2004 and on or before September 30, 2005.

H. Outlier Payment Provision

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. In the August 7, 2001 IRF PPS final rule, we codified at § 412.624(e)(4) of the regulations the provision to make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the IRF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients.

Under § 412.624(e)(4), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted IRF PPS payment for the CMG plus the adjusted threshold amount ($11,211 which is then adjusted for each IRF by the facility's wage adjustment, its low-income patient adjustment, and its rural adjustment, if applicable). We calculate the estimated cost of a case by multiplying the IRF's overall cost-to-charge ratio by the Medicare allowable covered charge. In accordance with § 412.624(e)(4), we pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted IRF PPS payment for the CMG and the adjusted threshold amount).

In the August 1, 2003, final rule, we stated that we will continue to pay outlier cases at 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted IRF PPS payment for the CMG and the adjusted threshold amount) (68 FR 45692). However, using the methodology stated in the August 1, 2003, final rule (68 FR 45692–45693), we will apply a ceiling to an IRF's cost-to-charge ratios (CCR). Also, in the August 1, 2003, final rule (68 FR 45693–45694), we stated the methodology we will use to adjust IRF outlier payments and the methodology we will use to make these adjustments. We indicated that the methodology is codified in § 412.624(e)(4) and § 412.84(i)(3).

On February 6, 2004, CMS issued manual instructions in Change Request 2998 stating that we would set forth the upper threshold (ceiling) and the national CCRs applicable to IRFs in each year's annual notice of prospective payment rates published in the **Federal Register**. The upper threshold CCR for IRFs for FY 2005 is 1.461.

In addition, we are updating the national urban and rural CCRs for IRFs. Pursuant to § 412.624(e)(4) and § 412.84(i)(3), the national CCR is applied to the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose operating or capital CCR is in excess of 3 standard deviations above the corresponding national geometric mean.
- Other IRFs for whom the fiscal intermediary obtains accurate data with which to calculate either an operating or capital CCR (or both) are not available.

The national CCR based on the facility location of either urban or rural will be

used in each of the three situations cited above. Specifically, for FY 2005, we have estimated a national CCR of 0.636 for rural IRFs and 0.531 for urban IRFs. For new facilities, these national ratios will be used until the facility's actual CCR can be computed using the first tentative settled or final settled cost report data, which will then be used for the subsequent cost report period.

II. Future Updates

Medicare payments to IRFs are based on a predetermined national payment rate per discharge. Annual updates to these payment rates are required by section 1886(j)(3)(C) of the Act. These updates are based on increases to the IRF market basket amount. For FY 2005, the update is established at the market basket amount. The IRF market basket, or input price index, developed by our Office of the Actuary (OACT), is just one component in determining a change to the IRF cost per discharge amount. It captures only the pure price change of inputs (labor, materials, and capital) used by an IRF to produce a constant quantity and quality of care. Other factors also contribute to the change in costs per discharge, which include changes in case-mix, intensity, and productivity.

An update framework, used in combination with the market basket, seeks to enhance the system for updating payments by addressing factors beyond changes in pure input price. Such a framework has been used under the inpatient hospital PPS for years by both CMS and the Medicare Payment Advisory Commission (MedPAC).

In general, an update framework in the context of the IRF PPS would provide a tool for measuring and understanding changes in cost per discharge. This has the potential to support the continued accuracy of IRF payments and ensure that the IRF PPS keeps pace with changing economic and health care market trends. Accordingly, we are examining the potential for developing and using an update framework under the IRF PPS. It has the potential to provide information useful to policy makers in determining the magnitude of the annual updates.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a proposed notice in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice issued. We find it is unnecessary to undertake notice and comment rulemaking as the statute requires annual updates, and this notice does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. Therefore, under 5 U.S.C. 553(b)(B), for good cause, we waive notice and comment procedures.

V. Regulatory Impact Analysis

A. Introduction

The August 7, 2001 final rule established the IRF PPS for the payment of Medicare services for cost reporting periods beginning on or after January 1, 2002. We incorporated a number of elements into the IRF PPS, such as case-level adjustments, a wage adjustment, an adjustment for the percentage of low-income patients, a rural adjustment, and outlier payments. This notice sets forth updates of the IRF PPS rates contained in the August 7, 2001 final rule.

The purpose of this notice is not to initiate policy changes with regard to the IRF PPS; rather, it is to provide an update to the IRF payment rates for discharges during FY 2005. We note that some individual providers may experience larger increases in payments than others due to the distributional impact of the FY 2005 wage indices.

In constructing these impacts, we do not attempt to predict behavioral responses, and we do not make adjustments for future changes in such variables as discharges or case-mix. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to IRFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) and Impact on Small Hospitals (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We estimate that the cost to the Medicare program for IRF services in FY 2005 will increase by $170 million over FY 2004 levels. The updates to the IRF labor-related share and wage indices are made in a budget neutral manner. Thus, updating the IRF labor-related share and the wage indices to FY 2005 have no overall effect on estimated costs to the Medicare program. Therefore, this estimated cost to the Medicare program is due to the application of the updated IRF market basket of 3.1 percent. Because the combined distributional effects and the cost to the Medicare program are greater than $100 million, this update notice is considered a major rule as defined above.

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze the economic impact of our regulations on small entities. If we determine that the regulation will impose a significant burden on a substantial number of small entities, we must examine options for reducing the burden. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals are considered small entities, either by nonprofit status or by having receipts of $6 million to $29 million in any 1 year. (For details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432.) Because we lack data on individual hospital

receipts, we cannot determine the number of small proprietary IRFs. Therefore, we assume that all IRFs (approximate total of 1,200 IRFs of which approximately 60 percent are nonprofit facilities) are considered small entities for the purpose of the analysis that follows. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

This notice establishes a 3.1 percent increase to the Federal PPS rates. We do not expect an incremental increase of 3.1 percent to the Medicare Federal rates to have a significant effect on the overall revenues of IRFs. Most IRFs are units of hospitals that provide many different types of services (for example, acute care, outpatient services) and the rehabilitation component of their business is relatively minor in comparison. In addition, IRFs provide services to (and generate revenues from) patients other than Medicare beneficiaries.

3. Impact on Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds.

As indicated above, this notice establishes a 3.1 percent increase to the Federal PPS rates. We do not expect an incremental increase of 3.1 percent to the Federal rates to have a significant effect on overall revenues or operations since most rural hospitals provide many different types of services (for example, acute care, outpatient services) and we believe that the rehabilitation component of their business is relatively minor in comparison.

4. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of at least $110 million. This notice will not have an effect on the governments mentioned nor will it affect private sector costs.

5. Executive Order 13132

We examined this notice in accordance with Executive Order 13132 and determined that it will not have any negative impact on the rights, roles, or responsibilities of State, local, or tribal governments.

6. Overall Impact

For the reasons stated above, we have not prepared an analysis under the RFA and section 1102(b) of the Act because we believe that the effect of this notice will not increase burden but will benefit most IRFs through the increase in the payment rates as shown in the regulatory impact analysis below.

B. Anticipated Effects of the Notice

We discuss below the impacts of this notice on the Federal budget and on IRFs.

1. Budgetary Impact

Section 1886(j)(3)(C) of the Act requires annual updates to the IRF PPS payment rates. We project that updating the IRF PPS for discharges occurring on or after October 1, 2004 and on or before September 30, 2005 will cost the Medicare program $170 million. The budgetary impact is the result of the application of the updated IRF market basket of 3.1 percent.

2. Impact on Providers

For the impact analyses shown in the August 7, 2001 final rule, we simulate payments for 1,024 facilities. To construct the impact analyses set forth in this notice, we use the latest available data. For FY 2005, we used 1999 and 2000 Medicare claims and Functional Independence Measure (FIM) data for the same facilities that were used in constructing the impact analyses provided in the August 7, 2001 IRF PPS final rule (66 FR 41364–41365, and 41372) which was effective for cost reporting periods beginning on or after January 1, 2002. We still do not have enough post-IRF PPS data to determine the distributional impact on providers. Further, we will need a sufficient amount of these data to be able to rely on them as the basis for the impact analysis. Because IRFs began to be paid under the IRF PPS based on their cost report start date that occurred on or after January 1, 2002, sufficient Medicare claims data will not be available for those facilities whose cost report start date occurs later in the calendar year. The estimated distributional impacts among the various classification of IRFs for discharges occurring on or after October 1, 2004 and on or before September 30, 2005 is reflected in Table 6, Projected Impact of FY 2005 Update to the IRF PPS, of this notice. These impacts reflect the updated IRF wage adjustment and the application of the 3.1 percent IRF market basket increase.

3. Calculation of the Estimated FY 2004 IRF Prospective Payments

To estimate payments under the IRF PPS for FY 2004, we multiplied each facility's case-mix index by the facility's number of Medicare discharges, the FY 2004 standard payment conversion factor, the applicable wage index, a low-income patient adjustment, and a rural adjustment (if applicable). The adjustments include the following:

The wage adjustment, calculated as follows:

((1–Labor Share) + (Labor Share × Wage Index)) = (.27641 + (.72359 × Wage Index))

The disproportionate share adjustment, calculated as follows:

(1 + Disproportionate Share Percentage) raised to the power of .4838)

The rural adjustment, if applicable, calculated by multiplying payments by 1.1914.

4. Calculation of the Estimated FY 2005 IRF Prospective Payments

To calculate FY 2005 payments, we use the payment rates described in this notice that reflect the 3.1 percent market basket increase factor. Further, we use the same facility level adjustments described above.

Table 6 illustrates the aggregate impact of the estimated FY 2005 updated payments among the various classifications of facilities compared to the estimated IRF PPS payment rates applicable for FY 2004.

The first column, Facility Classification, identifies the type of facility. The second column identifies the number of facilities for each classification type, and the third column lists the number of cases. The fourth column indicates the impact of the budget neutral wage adjustment. The last column reflects the combined changes including the update to the FY 2004 payment rates by 3.1 percent and the budget neutral wage adjustment (including the FY 2005 labor-related share and the FY 2005 wage indices).

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TABLE 6.—PROJECTED IMPACT OF FY 2005 UPDATE TO THE IRF PPS

Facility Classification	Number of Facilities	Number of Cases	Wage Index Percentage	Total Percent Change
Total				
	1,024	347,809	0.0	3.1
Urban unit	725	206,926	-0.1	3.0
Rural unit	131	26,507	0.5	3.6
Urban hospital	156	109,691	0.1	3.2
Rural hospital	12	4,685	-0.3	2.8
Total urban	881	316,617	0.0	3.1
Total rural	143	31,192	0.3	3.5
Urban by Region				
New England	32	15,039	0.3	3.4
Middle Atlantic	133	64,042	-0.6	2.5
South Atlantic	112	52,980	0.2	3.3
East North Central	171	55,071	-0.4	2.7
East South Central	41	23,434	0.7	3.8
West North Central	70	18,087	-1.2	1.9
West South Central	154	52,346	0.4	3.5
Mountain	56	14,655	0.8	3.9
Pacific	112	20,963	0.2	3.3
Rural by region				
New England	4	829	0.7	3.8
Middle Atlantic	10	2,424	-0.2	2.9
South Atlantic	20	6,192	0.3	3.4
East North Central	29	5,152	0.7	3.8
East South Central	10	3,590	-0.2	3.0
West North Central	22	3,820	1.4	4.6
West South Central	32	7,317	0.2	3.3
Mountain	9	1,042	-1.2	1.9
Pacific	7	826	0.5	3.6

As Table 6 illustrates, all IRFs will benefit from the 3.1 percent market basket increase that is applied to FY 2004 IRF PPS payment rates to develop the FY 2005 rates. However, there may be distributional impacts among various IRFs due to the application of the updates to the labor-related share and wage indices in a budget neutral manner.

To summarize, all facilities will receive a 3.1 percent increase in their unadjusted IRF PPS payments. The estimated positive impact for all IRFs reflected in Table 6 is due to the effect of the update to the IRF market basket index.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget (OMB).

Authority: Section 1886 (j) of the Social Security Act (42 U.S.C. 1395ww(j)) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 24, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 27, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–17444 Filed 7–29–04; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1249–N]

RIN 0938–AM46

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update—Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2005, as required by statute. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (the BBRA), the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the MMA), relating to Medicare payments and consolidated billing for SNFs.

EFFECTIVE DATE: This notice is effective on October 1, 2004.

FOR FURTHER INFORMATION CONTACT: John Davis, (410) 786–0008 (for information related to the Wage Index, and to swing-bed providers). Ellen Gay, (410) 786–4528 (for information related to the case-mix classification methodology). Jeanette Kranacs, (410) 786–9385 (for information related to the development of the payment rates). Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION: Because of the many terms to which we refer by abbreviation in this notice, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL Activity of Daily Living
AHE Average Hourly Earnings
AIDS Acquired Immune Deficiency Syndrome
ARD Assessment Reference Date
BBA Balanced Budget Act of 1997, Pub.L. 105–33
BBRA Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub.L. 106–113
BEA (U.S.) Bureau of Economic Analysis
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub.L. 106–554
CAH Critical Access Hospital
CFR Code of Federal Regulations
CMS Centers for Medicare & Medicaid Services
CPT (Physicians') Current Procedural Terminology
DRG Diagnosis Related Group
FI Fiscal Intermediary
FQHC Federally Qualified Health Center
FR Federal Register
FY Fiscal Year
GAO General Accounting Office
HCPCS Healthcare Common Procedure Coding System
ICD–9-CM International Classification of Diseases, Ninth Edition, Clinical Modification
IFC Interim Final Rule with Comment Period
MDS Minimum Data Set
MEDPAR Medicare Provider Analysis and Review File
MIP Medicare Integrity Program
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub.L. 108–173
MSA Metropolitan Statistical Area
NECMA New England County Metropolitan Area
OIG Office of the Inspector General
OMRA Other Medicare Required Assessment
PCE Personal Care Expenditures
PPI Producer Price Index
PPS Prospective Payment System
PRM Provider Reimbursement Manual
RAI Resident Assessment Instrument
RAP Resident Assessment Protocol
RAVEN Resident Assessment Validation Entry
RFA Regulatory Flexibility Act, Pub. L. 96–354
RHC Rural Health Clinic
RIA Regulatory Impact Analysis
RUG Resource Utilization Groups
SCHIP State Children's Health Insurance Program
SNF Skilled Nursing Facility
STM Staff Time Measure
UMRA Unfunded Mandates Reform Act, Pub. L. 104–4

I. Background

On August 4, 2003, we published in the **Federal Register** (68 FR 46036) a final rule that set forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2004. (We subsequently published a correction notice (68 FR 55882, September 29, 2003) with respect to those payment rate updates.) Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) relating to Medicare payments and consolidated billing for SNFs.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. In this notice, we are updating the per diem payment rates for SNFs for FY 2005. Major elements of the SNF PPS include:

- *Rates.* Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. The rates were adjusted annually using a SNF market basket index. Rates were case-mix adjusted using a classification system (Resource Utilization Groups, version III (RUG–III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). The rates were also adjusted by the hospital wage index to account for geographic variation in wages. (In section II.C of this notice, we discuss the wage index adjustment in greater detail.) A correction notice was published on October 10, 2003 (68 FR 58756) that announced a wage index for a particular MSA that had been inadvertently omitted from the September 29, 2003 correction notice

(68 FR 55882). Additionally, as noted in the August 4, 2003 final rule (68 FR 46036), section 101 of the BBRA and sections 311, 312, and 314 of the BIPA also affect the payment rate. Further, as explained in section I.E of this update notice, the Congress has subsequently enacted additional legislation, in section 511 of the MMA, that also affects the payment rate.

• *Transition*. The SNF PPS included an initial 3-year, phased transition that blended a facility-specific payment rate with the Federal case-mix adjusted rate. The last year of the transition was FY 2001. All facilities have been paid at the full Federal rate since the following fiscal year (FY 2002). Therefore, as discussed in section I.F.2 of this notice, we no longer include adjustment factors related to facility-specific rates for the coming fiscal year.

• *Coverage*. The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage; however, because RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the outputs of beneficiary assessment and RUG–III classifying activities. We discuss this coordination in greater detail in section II.E of this notice.

• *Consolidated Billing*. The SNF PPS includes a consolidated billing provision (described in greater detail in section IV. of this notice) that requires a SNF to submit consolidated Medicare bills for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, this provision places with the SNF the Medicare billing responsibility for physical, occupational, and speech-language therapy that the resident receives during a noncovered stay. The statute excludes a small list of services from the consolidated billing provision (primarily those of physicians and certain other types of practitioners), which remain separately billable to Part B when furnished to a SNF's Part A resident. As discussed in section IV. of this notice, section 410 of the MMA contains a provision that affects the applicability of the consolidated billing requirement to certain practitioner and other services furnished to SNF residents by rural health clinics (RHCs) and Federally Qualified Health Centers (FQHCs).

Application of the SNF PPS to SNF services furnished by swing-bed hospitals. Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. A more detailed discussion of this provision appears in section V. of this notice.

B. Requirements of the Balanced Budget Act of 1997 (BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.
2. The case-mix classification system to be applied with respect to these services during the FY.
3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure (see section II.E of this notice).

This notice provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2000 (65 FR 46770). In particular, section 101(a) of the BBRA provided for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups (SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB). Under the statute, this temporary increase remains in effect until the later of October 1, 2000, or the implementation of case-mix refinements in the PPS. Section 101(d) included a 4 percent across-the-board increase in the adjusted Federal per diem payment rates each year for FYs 2001 and 2002, exclusive of the 20 percent increase.

We included further information on all of the provisions of the BBRA that affect the SNF PPS in Program Memorandums A–99–53 and A–99–61 (December 1999), and Program Memorandum AB–00–18 (March 2000). In addition, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the July 31, 2001 final rule (66 FR 39562), we made conforming changes to the regulations at § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002, to reflect section 408 of the BBRA.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

The BIPA also included several provisions that resulted in adjustments to the PPS for SNFs. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2001 (66 FR 39562), as follows:

• Section 203 of the BIPA exempted critical access hospital (CAH) swing-beds from the SNF PPS; we included further information on this provision in Program Memorandum A–01–09 (January 16, 2001).

• Section 311 of the BIPA eliminated the one percentage point reduction in the SNF market basket that the statutory update formula had previously specified for FY 2001, changed the one percentage point reduction specified for FY 2002 to a 0.5 percentage point reduction, and established an update factor for FY 2003 of market basket minus 0.5 percentage point. This section also required us to conduct a study of alternative case-mix classification systems for the SNF PPS, and to submit a report to the Congress by January 1, 2005.

• Section 312 of the BIPA provided for a temporary 16.66 percent increase in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002. This section also required the General Accounting Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued. GAO issued this report (GAO–03–176) in November 2002.

• Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical, occupational, and speech-language therapy) furnished to SNF residents during noncovered stays, effective January 1, 2001.

• Section 314 of the BIPA adjusted the payment rates for all of the fourteen rehabilitation RUGs (RUC, RUB, RUA, RVC, RVB, RVA, RHC, RHB, RHA, RMC, RMB, RMA, RLB, and RLA), in order to correct an anomaly under which the existing payment rates for three particular rehabilitation RUGs—RHC, RMC, and RMB—were higher than the rates for some other, more intensive rehabilitation RUGs. Under the BIPA adjustment, the temporary increase that section 101(a) of the BBRA had applied to the RHC, RMC, and RMB rehabilitation RUGs was revised from 20 percent to 6.7 percent, and the BIPA adjustment also applied this temporary 6.7 percent increase to each of the other eleven rehabilitation RUGs as well.

• Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes.

We included further information on several of these provisions in Program Memorandum A–01–08 (January 16, 2001).

E. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

On December 8, 2003, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) was signed into law. This legislation introduces a new provision that results in a further adjustment to the PPS for SNFs. Specifically, section 511 of the MMA amends paragraph (12) of section 1888(e) of the Act to provide for a temporary 128 percent increase in the PPS per diem payment for any SNF resident with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. Like the temporary add-on payments created by section 101(a) of the BBRA (as amended by section 314 of the BIPA), this special AIDS add-on remains in effect until the implementation of case-mix refinements in the SNF PPS. The law further provides that the 128 percent increase in payment under the AIDS add-on is ''* * * determined without regard to any increase'' under section 101 of the BBRA (as amended by section 314 of the BIPA). As explained in the MMA Conference report, this means that if a resident qualifies for the temporary 128 percent increase in payment under the special AIDS add-on, ''the BBRA temporary RUG add-on does not apply in this case. * * *'' (H.R. Conf. Rep. No. 108–391 at 662). The AIDS add-on is also discussed in Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at *http://www.cms.hhs.gov/manuals/transmittals/comm_date_dsc.asp.*

Implementation of this provision results in a significant increase in payment. For example, using 2002 data we identified 773 SNF residents with a principal diagnosis code of 042. The average payment per day for these residents was approximately $261, including any applicable add-ons from Section (312) of the BIPA, Section (314) of the BIPA, and Section (101) of the BBRA. For FY2005, an urban facility with a resident with AIDS in the SSA RUG would have a case-mix adjusted payment of almost $216 (*see* Table 4) before the application of the section 511 MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted payment of approximately $492.

In addition, section 410 of the MMA contains a provision that affects the consolidated billing requirement, which we discuss in section IV. of this notice.

F. Skilled Nursing Facility Prospective Payment—General Overview

The Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. Providers that received new provider exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates, as well as costs related to payments for exceptions to the routine cost limits. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. This classification system, Resource Utilization Groups, version III (RUG-III), uses beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 44 RUG-III groups. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the RUG-III classification system.

Further, in accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the Federal rates in this notice reflect an update to the rates that we published in the August 4, 2003 final rule for FY 2004 (68 FR 46036) and the associated correction notice (68 FR 55882, September 29, 2003), equal to the full change in the SNF market basket index. A more detailed discussion of the SNF market basket index and related issues appears in sections I.G and III. of this notice.

2. Payment Provisions—Initial Transition Period

The SNF PPS included an initial, phased transition from a facility-specific rate (which reflected the individual facility's historical cost experience) to the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY

2001. Accordingly, starting with cost reporting periods beginning in FY 2002, we base payments entirely on the Federal rates and, as indicated in section II.F of this notice, we no longer include adjustment factors related to facility-specific rates for the coming fiscal year.

G. Use of the Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered SNF services. The SNF market basket index is used to update the Federal rates on an annual basis. The final rule published on July 31, 2001 (66 FR 39562) revised and rebased the market basket to reflect 1997 total cost data.

In addition, as explained in the FY 2004 final rule (68 FR 46058) and in section III.B of this notice, the annual update of the payment rates includes, as appropriate, an adjustment to account for market basket forecast error. This adjustment takes into account the forecast error from the most recently available fiscal year for which there is final data, and is applied whenever the difference between the forecasted and actual change in the market basket exceeds a 0.25 percentage point threshold. For FY 2003 (the most recently available fiscal year for which there is final data), the estimated increase in the market basket index was 3.1 percentage points, while the actual increase was 3.3 percentage points, resulting in only a 0.2 percentage point underforecast. Accordingly, as the difference between the estimated and actual amounts of change does not exceed the 0.25 percentage point threshold, the payment rates for FY 2005 do not include a forecast error adjustment. Table 1 below shows the forecasted and actual market basket amounts for FY 2003.

Table 1 - FY 2003 Forecast Error Correction for CMS SNF Market Basket

Index	Forecasted FY 2003 Increase*	Actual FY 2003 Increase**	FY 2003 Forecast Error Correction***
SNF	3.1	3.3	0.0

*Published in July 31, 2002 Federal Register; based on second quarter 2002 Global Insight/DRI-WEFA forecast.
**Based on the fourth quarter 2003 Global Insight/DRI-WEFA forecast.
***The FY 2003 forecast error correction will be applied to the FY 2005 PPS update. Any forecast error less than 0.25 percentage points is not reflected in the update.

II. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This notice sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2004. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related costs) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295–97)).

2. Methodology Used for the Calculation of the Federal Rates

The FY 2005 rates reflect an update using the full amount of the latest market basket index. The FY 2005 market basket increase factor is 2.8 percent. For a complete description of the multi-step process, see the May 12, 1998 interim final rule (63 FR 26252). We note that in accordance with section 101(a) of the BBRA and section 314 of the BIPA, the existing, temporary increase in the per diem adjusted payment rates of 20 percent for certain specified RUGs (and 6.7 percent for certain others) remains in effect until the implementation of case-mix refinements. This is also the case for the temporary 128 percent increase in the per diem adjusted payment rates for SNF residents with AIDS, enacted by section 511 of the MMA. As discussed elsewhere in this notice, while we are proceeding with our ongoing research in this area, we are not implementing case-mix refinements at the present time.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal fiscal year beginning October 1, 2003, and ending September 30, 2004, and the midpoint of the Federal fiscal year beginning October 1, 2004, and ending September 30, 2005, to which the payment rates apply. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the payment rates for FY 2005 are updated by a factor equal to the full market basket index percentage increase. The rates are further adjusted by a wage index budget neutrality factor, described later in this section. Tables 2 and 3 reflect the updated components of the unadjusted Federal rates for FY 2005.

Table 2
FY 2005 Unadjusted Federal Rate Per Diem
Urban

Rate Component	Nursing - Case-Mix	Therapy - Case-Mix	Therapy - Non-Case-mix	Non-Case-Mix
Per Diem Amount	$133.29	$100.40	$13.22	$68.03

Table 3
FY 2005 Unadjusted Federal Rate Per Diem
Rural

Rate Component	Nursing - Case-Mix	Therapy - Case-Mix	Therapy-Non-Case-Mix	Non-Case-Mix
Per Diem Amount	$127.34	$115.78	$14.12	$69.29

B. Case-Mix Refinements

Under the BBA, each update of the SNF PPS payment rates must include the case-mix classification methodology applicable for the coming Federal fiscal year. As noted in the following discussion, we are proceeding with our ongoing research regarding possible refinements in the existing case-mix classification system, but we are not implementing the refinements in this notice. Therefore, we continue at present to utilize the existing case-mix classification system that employs the 44 RUG–III groups.

As discussed previously in this notice, section 101(a) of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups. This legislation specified that the 20 percent increase would be effective for SNF services furnished on or after April 1, 2000, and would continue until the later of: (1) October 1, 2000, or (2) implementation of a refined case-mix classification system under section 1888(e)(4)(G)(i) of the Act that would better account for medically complex patients.

In the SNF PPS proposed rule for FY 2001 (65 FR 19190, April 10, 2000), we proposed making an extensive, comprehensive set of refinements to the existing case-mix classification system that collectively would have significantly expanded the existing 44-group structure. However, when our subsequent validation analyses indicated that the refinements would afford only a limited degree of improvement in explaining resource utilization relative to the significant increase in complexity that they would entail, we decided not to implement them at that time (see the FY 2001 final rule published July 31, 2000 (65 FR 46773)). Nevertheless, since the BBRA provision had demonstrated a Congressional interest in improving the ability of the payment system to account for the care furnished to medically complex patients in SNFs, we continued to conduct research in this area.

The Congress subsequently enacted section 311(e) of the BIPA, which directed us to conduct a study of the different systems for categorizing patients in Medicare SNFs in a manner that accounts for the relative resource utilization of different patient types, and to issue a report with any appropriate recommendations to the Congress by January 1, 2005. The extended timeframe for conducting the study, and the broad mandate in the BIPA to consider various classification systems and the full range of patient types, stood in sharp contrast to the BBRA language regarding more incremental refinements to the existing case-mix classification system under section 1888(e)(4)(G)(i) of the Act. This underscored the fact that implementing the latter type of refinements to the existing system in order to better account for medically complex patients need not await the completion of the more comprehensive changes envisioned in the BIPA. Accordingly, we again considered the possibility of including these refinements as part of the following year's annual update of the SNF payment rates.

However, in the July 31, 2002 update notice (67 FR 49801), we determined that the research was not sufficiently advanced to implement any case-mix refinements at that time, thus leaving the current classification system in place. This also left in place the temporary add-on payments enacted in section 101(a) of the BBRA. Moreover, while we have continued with our ongoing research regarding possible refinements in the existing case-mix classification system, this research has not yet provided the basis for proceeding with those refinements. Accordingly, we are not implementing case-mix refinements in this notice.

As a result, the payment rates set forth in this notice reflect the continued use of the 44-group RUG–III classification system discussed in the May 12, 1998 interim final rule (63 FR 26252). We are also maintaining the add-ons to the Federal rates for the specified RUG–III

groups required by section 101(a) of the BBRA and subsequently modified by section 314 of the BIPA. The case-mix adjusted payment rates are listed separately for urban and rural SNFs in Tables 4 and 5, with the corresponding case-mix values. These tables do not reflect the temporary add-on to the specified RUG–III groups provided in the BBRA, or the new AIDS add-on enacted by section 511 of the MMA, which are applied only after all other adjustments (wage and case-mix) are made.

Meanwhile, we continue to explore both short-term and longer-range revisions to our case-mix classification methodology. In July 2001, we awarded a contract to the Urban Institute to perform research to aid us in making incremental refinements to the case-mix classification system under section 1888(e)(4)(G)(i) of the Act and to begin the case-mix study mandated by section 311(e) of the BIPA. The results of our current research will be included in the report to the Congress that section 311(e) of the BIPA requires us to submit by January 1, 2005. As we noted in the May 10, 2001 proposed rule (66 FR 23990), this research may also support a longer term goal of developing more integrated approaches for the payment and delivery system for Medicare post acute services in general. This broader, ongoing research project will pursue several avenues in studying various case-mix classification systems. Our preliminary research has focused on incorporating comorbidities and complications into the classification strategy, and we will thoroughly explore and evaluate this approach and other approaches (including procedures that might account more accurately for ancillary services) in our ongoing work.

In addition, we note that certain questions have arisen recently in connection with a particular aspect of a previous discussion of the case-mix classification system, which appeared in the preamble to the FY 2000 SNF PPS final rule (64 FR 41660–61, July 30, 1999). Specifically, that portion of the preamble discussed the coverage of rehabilitation therapy services (that is, physical, occupational, and speech-language therapy) under the SNF PPS. This discussion noted the longstanding requirement for such therapy services to be furnished under ''an active written treatment regimen established by the physician. * * *'' We further indicated that while Medicare allows the professional therapist to begin providing services based on that plan prior to obtaining the physician's signature on the plan,

> * * * a physician signature must be obtained before the facility bills Medicare for payment for the rehabilitation therapy services provided to the beneficiary based on the plan of treatment he or she has approved. In this way, the facility can be sure that the level of therapy for which it bills Medicare is the level the physician deems to be medically necessary.

In view of the questions that have arisen recently regarding that portion of the preamble discussion, we would like to take this opportunity to clarify the requirement for physician verification as it relates to rehabilitation therapy services provided to a beneficiary during a covered Part A SNF stay that is being paid under the SNF PPS. Under section 1814(a)(2)(B) of the Act and the implementing regulations at 42 CFR 424.20, the physician must certify (and periodically recertify) that a beneficiary requires daily skilled nursing or rehabilitation services which, as a practical matter, can only be provided in the SNF on an inpatient basis (OMB approval number 0938–0454 with a current expiration date of June 30, 2006). However, beyond this overall statement as to the beneficiary's need for a SNF level of care, the law and regulations do not require, as a prerequisite for Part A coverage of rehabilitation therapy under the SNF benefit, the completion of a further physician certification, specifically with reference to the therapy plan of treatment.

Accordingly, notwithstanding the statement in the preamble to the 1999 final rule, as the Part A SNF benefit requires rehabilitation therapy to be furnished according to an active written treatment regimen established and certified by the physician, it is not necessary for a SNF to obtain a separate physician signature on the therapy treatment plan itself prior to billing Part A for the therapy services. We wish to note explicitly that the foregoing discussion applies specifically to coverage of rehabilitation therapy in the context of the Part A SNF benefit, and does not address plan of care requirements under the separate Part B therapy benefits, which are subject to their own set of coverage requirements.

Table 4
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
URBAN

RUG-III Category	Nursing Index	Therapy Index	Nursing Compo-nent	Therapy Compo-nent	Non-case Mix Therapy Comp	Non-case Mix Compo-nent	Total Rate
RUC	1.30	2.25	173.28	225.90		68.03	467.21
RUB	0.95	2.25	126.63	225.90		68.03	420.56
RUA	0.78	2.25	103.97	225.90		68.03	397.90
RVC	1.13	1.41	150.62	141.56		68.03	360.21
RVB	1.04	1.41	138.62	141.56		68.03	348.21
RVA	0.81	1.41	107.96	141.56		68.03	317.55
RHC	1.26	0.94	167.95	94.38		68.03	330.36
RHB	1.06	0.94	141.29	94.38		68.03	303.70
RHA	0.87	0.94	115.96	94.38		68.03	278.37
RMC	1.35	0.77	179.94	77.31		68.03	325.28
RMB	1.09	0.77	145.29	77.31		68.03	290.63
RMA	0.96	0.77	127.96	77.31		68.03	273.30
RLB	1.11	0.43	147.95	43.17		68.03	259.15
RLA	0.80	0.43	106.63	43.17		68.03	217.83
SE3	1.70		226.59		13.22	68.03	307.84
SE2	1.39		185.27		13.22	68.03	266.52
SE1	1.17		155.95		13.22	68.03	237.20
SSC	1.13		150.62		13.22	68.03	231.87
SSB	1.05		139.95		13.22	68.03	221.20
SSA	1.01		134.62		13.22	68.03	215.87
CC2	1.12		149.28		13.22	68.03	230.53
CC1	0.99		131.96		13.22	68.03	213.21
CB2	0.91		121.29		13.22	68.03	202.54
CB1	0.84		111.96		13.22	68.03	193.21
CA2	0.83		110.63		13.22	68.03	191.88
CA1	0.75		99.97		13.22	68.03	181.22
IB2	0.69		91.97		13.22	68.03	173.22
IB1	0.67		89.30		13.22	68.03	170.55
IA2	0.57		75.98		13.22	68.03	157.23
IA1	0.53		70.64		13.22	68.03	151.89
BB2	0.68		90.64		13.22	68.03	171.89
BB1	0.65		86.64		13.22	68.03	167.89
BA2	0.56		74.64		13.22	68.03	155.89
BA1	0.48		63.98		13.22	68.03	145.23
PE2	0.79		105.30		13.22	68.03	186.55
PE1	0.77		102.63		13.22	68.03	183.88
PD2	0.72		95.97		13.22	68.03	177.22
PD1	0.70		93.30		13.22	68.03	174.55
PC2	0.65		86.64		13.22	68.03	167.89
PC1	0.64		85.31		13.22	68.03	166.56
PB2	0.51		67.98		13.22	68.03	149.23
PB1	0.50		66.65		13.22	68.03	147.90

PA2	0.49		65.31		13.22	68.03	146.56
PA1	0.46		61.31		13.22	68.03	142.56

Table 5
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
RURAL

RUG-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUC	1.30	2.25	165.54	260.51		69.29	495.34
RUB	0.95	2.25	120.97	260.51		69.29	450.77
RUA	0.78	2.25	99.33	260.51		69.29	429.13
RVC	1.13	1.41	143.89	163.25		69.29	376.43
RVB	1.04	1.41	132.43	163.25		69.29	364.97
RVA	0.81	1.41	103.15	163.25		69.29	335.69
RHC	1.26	0.94	160.45	108.83		69.29	338.57
RHB	1.06	0.94	134.98	108.83		69.29	313.10
RHA	0.87	0.94	110.79	108.83		69.29	288.91
RMC	1.35	0.77	171.91	89.15		69.29	330.35
RMB	1.09	0.77	138.80	89.15		69.29	297.24
RMA	0.96	0.77	122.25	89.15		69.29	280.69
RLB	1.11	0.43	141.35	49.79		69.29	260.43
RLA	0.80	0.43	101.87	49.79		69.29	220.95
SE3	1.70		216.48		14.12	69.29	299.89
SE2	1.39		177.00		14.12	69.29	260.41
SE1	1.17		148.99		14.12	69.29	232.40
SSC	1.13		143.89		14.12	69.29	227.30
SSB	1.05		133.71		14.12	69.29	217.12
SSA	1.01		128.61		14.12	69.29	212.02
CC2	1.12		142.62		14.12	69.29	226.03
CC1	0.99		126.07		14.12	69.29	209.48
CB2	0.91		115.88		14.12	69.29	199.29
CB1	0.84		106.97		14.12	69.29	190.38
CA2	0.83		105.69		14.12	69.29	189.10
CA1	0.75		95.51		14.12	69.29	178.92
IB2	0.69		87.86		14.12	69.29	171.27
IB1	0.67		85.32		14.12	69.29	168.73
IA2	0.57		72.58		14.12	69.29	155.99
IA1	0.53		67.49		14.12	69.29	150.90

BB2	0.68	86.59	14.12	69.29	170.00
BB1	0.65	82.77	14.12	69.29	166.18
BA2	0.56	71.31	14.12	69.29	154.72
BA1	0.48	61.12	14.12	69.29	144.53
PE2	0.79	100.60	14.12	69.29	184.01
PE1	0.77	98.05	14.12	69.29	181.46
PD2	0.72	91.68	14.12	69.29	175.09
PD1	0.70	89.14	14.12	69.29	172.55
PC2	0.65	82.77	14.12	69.29	166.18
PC1	0.64	81.50	14.12	69.29	164.91
PB2	0.51	64.94	14.12	69.29	148.35
PB1	0.50	63.67	14.12	69.29	147.08
PA2	0.49	62.40	14.12	69.29	145.81
PA1	0.46	58.58	14.12	69.29	141.99

C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We are continuing that practice for FY 2005.

The wage index adjustment is applied to the labor-related portion of the Federal rate, which is 76.222 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2005. The labor-related relative importance for FY 2004 was 76.372 as shown in Table 11. The decrease in the labor share benefits rural areas. The labor-related relative importance is calculated from the SNF market basket, and approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2005. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2005 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2005 in four steps. First, we compute the FY 2005 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2005 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2005 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we sum the FY 2005 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, nonmedical professional fees, labor-intensive services, and a portion of capital-related expenses) to produce the FY 2005 labor-related relative importance. Tables 6 and 7 show the Federal rates by labor-related and non-labor-related components.

Table 6
Case-Mix Adjusted Federal Rates for Urban SNFs By Labor and Non-Labor Component

RUG III Category	Total Rate	Labor Portion	Non-Labor Portion
RUC	467.21	356.12	111.09
RUB	420.56	320.56	.100.00
RUA	397.90	303.29	94.61
RVC	360.21	274.56	85.65
RVB	348.21	265.41	82.80
RVA	317.55	242.04	75.51
RHC	330.36	251.81	78.55
RHB	303.70	231.49	72.21
RHA	278.37	212.18	66.19
RMC	325.28	247.93	77.35
RMB	290.63	221.52	69.11
RMA	273.30	208.31	64.99
RLB	259.15	197.53	61.62
RLA	217.83	166.03	51.80
SE3	307.84	234.64	73.20
SE2	266.52	203.15	63.37
SE1	237.20	180.80	56.40
SSC	231.87	176.74	55.13
SSB	221.20	168.60	52.60
SSA	215.87	164.54	51.33
CC2	230.53	175.71	54.82
CC1	213.21	162.51	50.70
CB2	202.54	154.38	48.16
CB1	193.21	147.27	45.94
CA2	191.88	146.25	45.63
CA1	181.22	138.13	43.09
IB2	173.22	132.03	41.19
IB1	170.55	130.00	40.55
IA2	157.23	119.84	37.39
IA1	151.89	115.77	36.12
BB2	171.89	131.02	40.87
BB1	167.89	127.97	39.92
BA2	155.89	118.82	37.07
BA1	145.23	110.70	34.53
PE2	186.55	142.19	44.36
PE1	183.88	140.16	43.72
PD2	177.22	135.08	42.14
PD1	174.55	133.05	41.50
PC2	167.89	127.97	39.92

PC1	166.56	126.96	39.60
PB2	149.23	113.75	35.48
PB1	147.90	112.73	35.17
PA2	146.56	111.71	34.85
PA1	142.56	108.66	33.90

Table 7
Case-Mix Adjusted Federal Rates for Rural SNFs by Labor and Non-Labor Component

RUG III Category	Total Rate	Labor Portion	Non-Labor Portion
RUC	495.34	377.56	117.78
RUB	450.77	343.59	107.18
RUA	429.13	327.09	102.04
RVC	376.43	286.92	89.51
RVB	364.97	278.19	86.78
RVA	335.69	255.87	79.82
RHC	338.57	258.06	80.51
RHB	313.10	238.65	74.45
RHA	288.91	220.21	68.70
RMC	330.35	251.80	78.55
RMB	297.24	226.56	70.68
RMA	280.69	213.95	66.74
RLB	260.43	198.50	61.93
RLA	220.95	168.41	52.54
SE3	299.89	228.58	71.31
SE2	260.41	198.49	61.92
SE1	232.40	177.14	55.26
SSC	227.30	173.25	54.05
SSB	217.12	165.49	51.63
SSA	212.02	161.61	50.41
CC2	226.03	172.28	53.75
CC1	209.48	159.67	49.81
CB2	199.29	151.90	47.39
CB1	190.38	145.11	45.27
CA2	189.10	144.14	44.96
CA1	178.92	136.38	42.54
IB2	171.27	130.55	40.72
IB1	168.73	128.61	40.12
IA2	155.99	118.90	37.09
IA1	150.90	115.02	35.88
BB2	170.00	129.58	40.42
BB1	166.18	126.67	39.51
BA2	154.72	117.93	36.79

BA1	144.53	110.16	34.37
PE2	184.01	140.26	43.75
PE1	181.46	138.31	43.15
PD2	175.09	133.46	41.63
PD1	172.55	131.52	41.03
PC2	166.18	126.67	39.51
PC1	164.91	125.70	39.21
PB2	148.35	113.08	35.27
PB1	147.08	112.11	34.97
PA2	145.81	111.14	34.67
PA1	141.99	108.23	33.76

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or lesser than would otherwise be made in the absence of the wage adjustment. In this seventh PPS year (Federal rates effective October 1, 2004), we are applying the most recent wage index using the hospital wage data, and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying each of the components of the unadjusted Federal rates by a factor equal to the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2004. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MEDPAR) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for this year is 1.0011.

The wage index applicable to FY 2005 can be found in Table 8 and Table 9 of this notice. We note that section 1886(d)(3)(E) of the Act (as amended by section 304(c)(2) of the BIPA) directs the Secretary to construct an occupational mix adjustment for the hospital area wage index, for application beginning October 1, 2004. However, the occupational mix adjustment outlined in section 1886(d)(3)(E) of the Act applies only to the inpatient hospital PPS, which utilizes a diagnosis-related group (DRG) payment system. While we are updating the wage index to reflect the latest hospital wage data, we have never included any adjustment for occupational mix in the SNF PPS, and we are not doing so now.

We continue to believe that the hospital wage data represent the best measure of wages and wage-related costs paid in the SNF setting. However, the occupational mix adjustment utilized by the hospital inpatient PPS serves specifically to define the occupational categories more clearly in a hospital setting. The collection of the occupational wage data also excludes any wage data related to SNFs; therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments.

We also note that we are not adopting in this notice any of the changes discussed in Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas, and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. A copy of that bulletin may be obtained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html*.

The proposed rule for the FY 2005 payment rates under the inpatient hospital PPS (69 FR 28249, May 18, 2004) discusses some of the problems and concerns associated with using these new definitions. We believe it is appropriate to wait until the public comments on that proposed rule have been submitted and analyzed before we consider proposing any new labor market definitions in the SNF context. Further, since the use of new definitions may have a significant impact on the SNF wage index and SNF payments, we believe that the nursing home industry and other interested parties should have sufficient time and opportunity to provide comment before we reach any conclusions on whether adopting these new definitions would produce an ''appropriate'' wage index for the SNF PPS under section 1888(e)(4)(G)(ii) of the Act. Accordingly, we plan to publish in a proposed rule any changes that we consider for new labor market definitions, in order to provide the public with an opportunity to comment on the possible use of these new labor market definitions in the SNF context. Until then, interested parties who would like to provide input on this issue are invited to do so by contacting either John Davis or Jeanette Kranacs (please refer to the section entitled, **FOR FURTHER INFORMATION CONTACT** at the beginning of this document).

Table 8 - Wage Index for Urban Areas

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
0040	Abilene, TX Taylor, TX	0.8009
0060	Aguadilla, PR Aguada, PR Aguadilla, PR Moca, PR	0.4294
0080	Akron, OH Portage, OH Summit, OH	0.9055
0120	Albany, GA Dougherty, GA Lee, GA	1.1266
0160	Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.8570
0200	Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM	1.0485
0220	Alexandria, LA Rapides, LA	0.8171
0240	Allentown-Bethlehem-Easton, PA Carbon, PA Lehigh, PA Northampton, PA	0.9536
0280	Altoona, PA Blair, PA	0.8462

0320	Amarillo, TX Potter, TX Randall, TX	0.9178
0380	Anchorage, AK Anchorage, AK	1.2109
0440	Ann Arbor, MI Lenawee, MI Livingston, MI Washtenaw, MI	1.0817
0450	Anniston,AL Calhoun, AL	0.7881
0460	Appleton-Oshkosh-Neenah, WI Calumet, WI Outagamie, WI Winnebago, WI	0.9115
0470	Arecibo, PR Arecibo, PR Camuy, PR Hatillo, PR	0.3757
0480	Asheville, NC Buncombe, NC Madison, NC	0.9502
0500	Athens, GA Clarke, GA Madison, GA Oconee, GA	1.0203
0520	Atlanta, GA Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA De Kalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA	0.9971

0560	Atlantic City-Cape May, NJ Atlantic City, NJ Cape May, NJ	1.0907
0580	Auburn-Opelika, AL Lee, AL	0.8215
0600	Augusta-Aiken, GA-SC Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	0.9208
0640	Austin-San Marcos, TX Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9596
0680	Bakersfield, CA Kern, CA	1.0036
0720	Baltimore, MD Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Annes, MD	0.9908
0733	Bangor, ME Penobscot, ME	0.9955
0743	Barnstable-Yarmouth, MA Barnstable, MA	1.2335
0760	Baton Rouge, LA Ascension, LA East Baton Rouge Livingston, LA West Baton Rouge, LA	0.8354
0840	Beaumont-Port Arthur, TX Hardin, TX Jefferson, TX Orange, TX	0.8616
0860	Bellingham, WA Whatcom, WA	1.1643
0870	Benton Harbor, MI Berrien, MI	0.8847
0875	Bergen-Passaic, NJ Bergen, NJ Passaic, NJ	1.1967

0880	Billings, MT Yellowstone, MT	0.8961
0920	Biloxi-Gulfport-Pascagoula, MS Hancock, MS Harrison, MS Jackson, MS	0.8649
0960	Binghamton, NY Broome, NY Tioga, NY	0.8447
1000	Birmingham, AL Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.9199
1010	Bismarck, ND Burleigh, ND Morton, ND	0.7505
1020	Bloomington, IN Monroe, IN	0.8588
1040	Bloomington-Normal, IL McLean, IL	0.9111
1080	Boise City, ID Ada, ID Canyon, ID	0.9352
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1291
1125	Boulder-Longmont, CO Boulder, CO	1.0046
1145	Brazoria, TX Brazoria, TX	0.8525
1150	Bremerton, WA Kitsap, WA	1.0614
1240	Brownsville-Harlingen-San Benito, TX Cameron, TX	1.0125
1260	Bryan-College Station, TX Brazos, TX	0.9219

1280	Buffalo-Niagara Falls, NY Erie, NY Niagara, NY	0.9339
1303	Burlington, VT Chittenden, VT Franklin, VT Grand Isle, VT	0.9322
1310	Caguas, PR Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	0.4061
1320	Canton-Massillon, OH Carroll, OH Stark, OH	0.8895
1350	Casper, WY Natrona, WY	0.9244
1360	Cedar Rapids, IA Linn, IA	0.8975
1400	Champaign-Urbana, IL Champaign, IL	0.9527
1440	Charleston-North Charleston, SC Berkeley, SC Charleston, SC Dorchester, SC	0.9420
1480	Charleston, WV Kanawha, WV Putnam, WV	0.8876
1520	Charlotte-Gastonia-Rock Hill, NC-SC Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC York, SC	0.9712
1540	Charlottesville, VA Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA	1.0295

1560	Chattanooga, TN-GA Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN	0.9207
1580	Cheyenne, WY Laramie, WY	0.8980
1600	Chicago, IL Cook, IL De Kalb, IL Du Page, IL Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL	1.0852
1620	Chico-Paradise, CA Butte, CA	1.0543
1640	Cincinnati, OH-KY-IN Dearborn, IN Ohio, IN Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY Brown, OH Clermont, OH Hamilton, OH Warren, OH	0.9595
1660	Clarksville-Hopkinsville, TN-KY Christian, KY Montgomery, TN	0.8022
1680	Cleveland-Lorain-Elyria, OH Ashtabula, OH Geauga, OH Cuyahoga, OH Lake, OH Lorain, OH Medina, OH	0.9626
1720	Colorado Springs, CO El Paso, CO	0.9793
1740	Columbia MO Boone, MO	0.8396

1760	Columbia, SC Lexington, SC Richland, SC	0.9450
1800	Columbus, GA-AL Russell,AL Chattanoochee, GA Harris, GA Muscogee, GA	0.8690
1840	Columbus, OH Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH	0.9753
1880	Corpus Christi, TX Nueces, TX San Patricio, TX	0.8647
1890	Corvallis, OR Benton, OR	1.0545
1900	Cumberland, MD-WV Allegany MD Mineral WV	0.8662
1920	Dallas, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX	1.0049
1950	Danville, VA Danville City, VA Pittsylvania, VA	0.8643
1960	Davenport-Moline-Rock Island, IA-IL Scott, IA Henry, IL Rock Island, IL	0.8774
2000	Dayton-Springfield, OH Clark, OH Greene, OH Miami, OH Montgomery, OH	0.9232
2020	Daytona Beach, FL Flagler, FL Volusia, FL	0.8900

2030	Decatur, AL Lawrence, AL Morgan, AL	0.8894
2040	Decatur, IL Macon, IL	0.8122
2080	Denver, CO Adams, CO Arapahoe, CO Broomfield, CO Denver, CO Douglas, CO Jefferson, CO	1.0905
2120	Des Moines, IA Dallas, IA Polk, IA Warren, IA	0.9267
2160	Detroit, MI Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI	1.0227
2180	Dothan, AL Dale, AL Houston, AL	0.7597
2190	Dover, DE Kent, DE	0.9825
2200	Dubuque, IA Dubuque, IA	0.8748
2240	Duluth-Superior, MN-WI St. Louis, MN Douglas, WI	1.0356
2281	Dutchess County, NY Dutchess, NY	1.1658
2290	Eau Claire, WI Chippewa, WI Eau Claire, WI	0.9139
2320	El Paso, TX El Paso, TX	0.9065
2330	Elkhart-Goshen, IN Elkhart, IN	0.9279
2335	Elmira, NY Chemung, NY	0.8445
2340	Enid, OK Garfield, OK	0.9001
2360	Erie, PA Erie, PA	0.8699

2400	Eugene-Springfield, OR Lane, OR	1.0940
2440	Evansville-Henderson, IN-KY Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8395
2520	Fargo-Moorhead, ND-MN Clay, MN Cass, ND	0.9115
2560	Fayetteville, NC Cumberland, NC	0.9363
2580	Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR	0.8637
2620	Flagstaff, AZ-UT Coconino, AZ Kane, UT	1.0611
2640	Flint, MI Genesee, MI	1.1178
2650	Florence, AL Colbert, AL Lauderdale, AL	0.7883
2655	Florence, SC Florence, SC	0.8961
2670	Fort Collins-Loveland, CO Larimer, CO	1.0219
2680	Ft. Lauderdale, FL Broward, FL	1.0165
2700	Fort Myers-Cape Coral, FL Lee, FL	0.9372
2710	Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	1.0046
2720	Fort Smith, AR-OK Crawford, AR Sebastian, AR Sequoyah, OK	0.8303
2750	Fort Walton Beach, FL Okaloosa, FL	0.8786
2760	Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.9737

2800	Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9538
2840	Fresno, CA Fresno, CA Madera, CA	1.0408
2880	Gadsden, AL Etowah, AL	0.8049
2900	Gainesville, FL Alachua, FL	0.9459
2920	Galveston-Texas City, TX Galveston, TX	0.9403
2960	Gary, IN Lake, IN Porter, IN	0.9343
2975	Glens Falls, NY Warren, NY Washington, NY	0.8467
2980	Goldsboro, NC Wayne, NC	0.8779
2985	Grand Forks, ND-MN Polk, MN Grand Forks, ND	0.9092
2995	Grand Junction, CO Mesa, CO	0.9900
3000	Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	0.9520
3040	Great Falls, MT Cascade, MT	0.8810
3060	Greeley, CO Weld, CO	0.9444
3080	Green Bay, WI Brown, WI	0.9586
3120	Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.9312

3150	Greenville, NC Pitt, NC	0.9183
3160	Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9400
3180	Hagerstown, MD Washington, MD	0.9940
3200	Hamilton-Middletown, OH Butler, OH	0.9066
3240	Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9286
3283	Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.1068
3285	Hattiesburg, MS Forrest, MS Lamar, MS	0.7362
3290	Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.9502
3320	Honolulu, HI Honolulu, HI	1.1014
3350	Houma, LA Lafourche, LA Terrebonne, LA	0.7721
3360	Houston, TX Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	1.0117

3400	Huntington-Ashland, WV-KY-OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	0.9565
3440	Huntsville, AL Limestone, AL Madison, AL	0.8851
3480	Indianapolis, IN Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	1.0039
3500	Iowa City, IA Johnson, IA	0.9655
3520	Jackson, MI Jackson, MI	0.9146
3560	Jackson, MS Hinds, MS Madison, MS Rankin, MS	0.8406
3580	Jackson, TN Chester, TN Madison, TN	0.8900
3600	Jacksonville, FL Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.9548
3605	Jacksonville, NC Onslow, NC	0.8402
3610	Jamestown, NY Chautaqua, NY	0.7589
3620	Janesville-Beloit, WI Rock, WI	0.9583
3640	Jersey City, NJ Hudson, NJ	1.0923

3660	Johnson City-Kingsport-Bristol, TN-VA Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA	0.8203
3680	Johnstown, PA Cambria, PA Somerset, PA	0.7981
3700	Jonesboro, AR Craighead, AR	0.7934
3710	Joplin, MO Jasper, MO Newton, MO	0.8721
3720	Kalamazoo-Battlecreek, MI Calhoun, MI Kalamazoo, MI Van Buren, MI	1.0350
3740	Kankakee, IL Kankakee, IL	1.0603
3760	Kansas City, KS-MO Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO	0.9642
3800	Kenosha, WI Kenosha, WI	0.9772
3810	Killeen-Temple, TX Bell, TX Coryell, TX	0.9242
3840	Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.8509

3850	Kokomo, IN Howard, IN Tipton, IN	0.8986
3870	La Crosse, WI-MN Houston, MN La Crosse, WI	0.9290
3880	Lafayette, LA Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.8105
3920	Lafayette, IN Clinton, IN Tippecanoe, IN	0.9068
3960	Lake Charles, LA Calcasieu, LA	0.7959
3980	Lakeland-Winter Haven, FL Polk, FL	0.8931
4000	Lancaster, PA Lancaster, PA	0.9883
4040	Lansing-East Lansing, MI Clinton, MI Eaton, MI Ingham, MI	0.9659
4080	Laredo, TX Webb, TX	0.8747
4100	Las Cruces, NM Dona Ana, NM	0.8784
4120	Las Vegas, NV-AZ Mohave, AZ Clark, NV Nye, NV	1.1121
4150	Lawrence, KS Douglas, KS	0.8644
4200	Lawton, OK Comanche, OK	0.8212
4243	Lewiston-Auburn, ME Androscoggin, ME	0.9562
4280	Lexington, KY Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	0.8053

4320	Lima, OH Allen, OH Auglaize, OH	0.9258
4360	Lincoln, NE Lancaster, NE	1.0208
4400	Little Rock-North Little, AR Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.8827
4420	Longview-Marshall, TX Gregg, TX Harrison, TX Upshur, TX	0.8739
4480	Los Angeles-Long Beach, CA Los Angeles, CA	1.1732
4520	Louisville, KY-IN Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY	0.9163
4600	Lubbock, TX Lubbock, TX	0.8777
4640	Lynchburg, VA Amherst, VA Bedford City, VA Bedford, VA Campbell, VA Lynchburg City, VA	0.9018
4680	Macon, GA Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	0.9596
4720	Madison, WI Dane, WI	1.0395
4800	Mansfield, OH Crawford, OH Richland, OH	0.9105

4840	Mayaguez, PR Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR	0.4769
4880	McAllen-Edinburg-Mission, TX Hidalgo, TX	0.8602
4890	Medford-Ashland, OR Jackson, OR	1.0534
4900	Melbourne-Titusville-Palm Bay, FL Brevard, FL	0.9633
4920	Memphis, TN-AR-MS Crittenden, AR De Soto, MS Fayette, TN Shelby, TN Tipton, TN	0.9234
4940	Merced, CA Merced, CA	1.0576
5000	Miami, FL Dade, FL	1.0026
5015	Middlesex-Somerset-Hunterdon, NJ Hunterdon, NJ Middlesex, NJ Somerset, NJ	1.1360
5080	Milwaukee-Waukesha, WI Milwaukee, WI Ozaukee, WI Washington, WI Waukesha, WI	1.0076
5120	Minneapolis-St. Paul, MN-WI Anoka, MN Carver, MN Chisago, MN Dakota, MN Hennepin, MN Isanti, MN Ramsey, MN Scott, MN Sherburne, MN Washington, MN Wright, MN Pierce, WI St. Croix, WI	1.1067
5140	Missoula, MT Missoula, MT	0.9618

5160	Mobile, AL Baldwin, AL Mobile, AL	0.7933
5170	Modesto, CA Stanislaus, CA	1.1966
5190	Monmouth-Ocean, NJ Monmouth, NJ Ocean, NJ	1.0889
5200	Monroe, LA Ouachita, LA	0.7913
5240	Montgomery, AL Autauga, AL Elmore, AL Montgomery, AL	0.8300
5280	Muncie, IN Delaware, IN	0.8580
5330	Myrtle Beach, SC Horry, SC	0.9022
5345	Naples, FL Collier, FL	1.0596
5360	Nashville, TN Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford, TN Sumner, TN Williamson, TN Wilson, TN	1.0108
5380	Nassau-Suffolk, NY Nassau, NY Suffolk, NY	1.2921
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT Fairfield, CT New Haven, CT	1.2254
5523	New London-Norwich, CT New London, CT	1.1596
5560	New Orleans, LA Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Baptist, LA St. Tammany, LA	0.9103

5600	New York, NY Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY	1.3588
5640	Newark, NJ Essex, NJ Morris, NJ Sussex, NJ Union, NJ Warren, NJ	1.1625
5660	Newburgh, NY-PA Orange, NY Pike, PA	1.1171
5720	Norfolk-Virginia Beach-Newport News, VA-NC Currituck, NC Chesapeake City, VA Gloucester, VA Hampton City, VA Isle of Wight, VA James City, VA Mathews, VA Newport News City, VA Norfolk City, VA Poquoson City,VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA York, VA	0.8895
5775	Oakland, CA Alameda, CA Contra Costa, CA	1.5221
5790	Ocala, FL Marion, FL	0.9153
5800	Odessa-Midland, TX Ector, TX Midland, TX	0.9632

5880	Oklahoma City, OK Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK	0.8966
5910	Olympia, WA Thurston, WA	1.1007
5920	Omaha, NE-IA Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE	0.9754
5945	Orange County, CA Orange, CA	1.1612
5960	Orlando, FL Lake, FL Orange, FL Osceola, FL Seminole, FL	0.9742
5990	Owensboro, KY Daviess, KY	0.8434
6015	Panama City, FL Bay, FL	0.8124
6020	Parkersburg-Marietta, WV-OH Washington, OH Wood, WV	0.8288
6080	Pensacola, FL Escambia, FL Santa Rosa, FL	0.8306
6120	Peoria-Pekin, IL Peoria, IL Tazewell, IL Woodford, IL	0.8886
6160	Philadelphia, PA-NJ Burlington, NJ Camden, NJ Gloucester, NJ Salem, NJ Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA	1.0824

6200	Phoenix-Mesa, AZ Maricopa, AZ Pinal, AZ	0.9982
6240	Pine Bluff, AR Jefferson, AR	0.8673
6280	Pittsburgh, PA Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA	0.8756
6323	Pittsfield, MA Berkshire, MA	1.0439
6340	Pocatello, ID Bannock, ID	0.9602
6360	Ponce, PR Guáyanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR	0.4954
6403	Portland, ME Cumberland, ME Sagadahoc, ME York, ME	1.0112
6440	Portland-Vancouver, OR-WA Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Clark, WA	1.1403
6483	Providence-Warwick-Pawtucket, RI Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI	1.1062
6520	Provo-Orem, UT Utah, UT	0.9613
6560	Pueblo, CO Pueblo, CO	0.8752
6580	Punta Gorda, FL Charlotte, FL	0.9441
6600	Racine, WI Racine, WI	0.9045

6640	Raleigh-Durham-Chapel Hill, NC Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC	1.0258
6660	Rapid City, SD Pennington, SD	0.8912
6680	Reading, PA Berks, PA	0.9216
6690	Redding, CA Shasta, CA	1.1835
6720	Reno, NV Washoe, NV	1.0456
6740	Richland-Kennewick-Pasco, WA Benton, WA Franklin, WA	1.0520
6760	Richmond-Petersburg, VA Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA	0.9398
6780	Riverside-San Bernardino, CA Riverside, CA San Bernardino, CA	1.0975
6800	Roanoke, VA Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.8429
6820	Rochester, MN Olmsted, MN	1.1504

6840	Rochester, NY Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9196
6880	Rockford, IL Boone, IL Ogle, IL Winnebago, IL	0.9626
6895	Rocky Mount, NC Edgecombe, NC Nash, NC	0.8998
6920	Sacramento, CA El Dorado, CA Placer, CA Sacramento, CA	1.1849
6960	Saginaw-Bay City-Midland, MI Bay, MI Midland, MI Saginaw, MI	0.9696
6980	St. Cloud, MN Benton, MN Stearns, MN	1.0215
7000	St. Joseph, MO Andrews, MO Buchanan, MO	1.0013
7040	St. Louis, MO-IL Clinton, IL Jersey, IL Madison, IL Monroe, IL St. Clair, IL Franklin, MO Jefferson, MO Lincoln, MO St. Charles, MO St. Louis, MO St. Louis City, MO Warren, MO Sullivan City, MO	0.9081
7080	Salem, OR Marion, OR Polk, OR	1.0557
7120	Salinas, CA Monterey, CA	1.3823

7160	Salt Lake City-Ogden, UT Davis, UT Salt Lake, UT Weber, UT	0.9487
7200	San Angelo, TX Tom Green, TX	0.8168
7240	San Antonio, TX Bexar, TX Comal, TX Guadalupe, TX Wilson, TX	0.9023
7320	San Diego, CA San Diego, CA	1.1267
7360	San Francisco, CA Marin, CA San Francisco, CA San Mateo, CA	1.4712
7400	San Jose, CA Santa Clara, CA	1.4744

7440	San Juan-Bayamon, PR Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Los Piedras, PR Loiza, PR Luguillo, PR Manati, PR Morovis, PR Naguabo, PR Naranjito, PR Rio Grande, PR San Juan, PR Toa Alta, PR Toa Baja, PR Trujillo Alto, PR Vega Alta, PR Vega Baja, PR Yabucoa, PR	0.4802
7460	San Luis Obispo-Atascadero-Paso Robles, CA San Luis Obispo, CA	1.1118
7480	Santa Barbara-Santa Maria-Lompoc, CA Santa Barbara, CA	1.0771
7485	Santa Cruz-Watsonville, CA Santa Cruz, CA	1.4780
7490	Santa Fe, NM Los Alamos, NM Santa Fe, NM	1.0590
7500	Santa Rosa, CA Sonoma, CA	1.2962
7510	Sarasota-Bradenton, FL Manatee, FL Sarasota, FL	0.9630

7520	Savannah, GA Bryan, GA Chatham, GA Effingham, GA	0.9460
7560	Scranton--Wilkes-Barre--Hazleton, PA Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA	0.8523
7600	Seattle-Bellevue-Everett, WA Island, WA King, WA Snohomish, WA	1.1479
7610	Sharon, PA Mercer, PA	0.7881
7620	Sheboygan, WI Sheboygan, WI	0.8949
7640	Sherman-Denison, TX Grayson, TX	0.9617
7680	Shreveport-Bossier City, LA Bossier, LA Caddo, LA Webster, LA	0.9112
7720	Sioux City, IA-NE Woodbury, IA Dakota, NE	0.9094
7760	Sioux Falls, SD Lincoln, SD Minnehaha, SD	0.9441
7800	South Bend, IN St. Joseph, IN	0.9447
7840	Spokane, WA Spokane, WA	1.0661
7880	Springfield, IL Menard, IL Sangamon, IL	0.8738
7920	Springfield, MO Christian, MO Greene, MO Webster, MO	0.8597
8003	Springfield, MA Hampden, MA Hampshire, MA	1.0174
8050	State College, PA Centre, PA	0.8462

8080	Steubenville-Weirton, OH-WV Jefferson, OH Brooke, WV Hancock, WV	0.8281
8120	Stockton-Lodi, CA San Joaquin, CA	1.0564
8140	Sumter, SC Sumter, SC	0.8520
8160	Syracuse, NY Cayuga, NY Madison, NY Onondaga, NY Oswego, NY	0.9394
8200	Tacoma, WA Pierce, WA	1.1078
8240	Tallahassee, FL Gadsden, FL Leon, FL	0.8656
8280	Tampa-St. Petersburg-Clearwater, FL Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9024
8320	Terre Haute, IN Clay, IN Vermillion, IN Vigo, IN	0.8582
8360	Texarkana, AR-Texarkana, TX Miller, AR Bowie, TX	0.8414
8400	Toledo, OH Fulton, OH Lucas, OH Wood, OH	0.9525
8440	Topeka, KS Shawnee, KS	0.8904
8480	Trenton, NJ Mercer, NJ	1.0276
8520	Tucson, AZ Pima, AZ	0.8926
8560	Tulsa, OK Creek, OK Osage, OK Rogers, OK Tulsa, OK Wagoner, OK	0.8729
8600	Tuscaloosa, AL Tuscaloosa, AL	0.8440

8640	Tyler, TX Smith, TX	0.9502
8680	Utica-Rome, NY Herkimer, NY Oneida, NY	0.8295
8720	Vallejo-Fairfield-Napa, CA Napa, CA Solano, CA	1.3517
8735	Ventura, CA Ventura, CA	1.1105
8750	Victoria, TX Victoria, TX	0.8469
8760	Vineland-Millville-Bridgeton, NJ Cumberland, NJ	1.0573
8780	Visalia-Tulare-Porterville, CA Tulare, CA	0.9964
8800	Waco, TX McLennan, TX	0.8146
8840	Washington, DC-MD-VA-WV District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpepper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA King George, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Spotsylvania, VA Stafford, VA Warren, VA Berkeley, WV Jefferson, WV	1.0971
8920	Waterloo-Cedar Falls, IA Black Hawk, IA	0.8633
8940	Wausau, WI Marathon, WI	0.9570

8960	West Palm Beach-Boca Raton, FL Palm Beach, FL	1.0059
9000	Wheeling, OH-WV Belmont, OH Marshall, WV Ohio, WV	0.7449
9040	Wichita, KS Butler, KS Harvey, KS Sedgwick, KS	0.9473
9080	Wichita Falls, TX Archer, TX Wichita, TX	0.8395
9140	Williamsport, PA Lycoming, PA	0.8486
9160	Wilmington-Newark, DE-MD New Castle, DE Cecil, MD	1.1121
9200	Wilmington, NC New Hanover, NC Brunswick, NC	0.9237
9260	Yakima, WA Yakima, WA	1.0323
9270	Yolo, CA Yolo, CA	0.9378
9280	York, PA York, PA	0.9150
9320	Youngstown-Warren, OH Columbiana, OH Mahoning, OH Trumbull, OH	0.9518
9340	Yuba City, CA Sutter, CA Yuba, CA	1.0364
9360	Yuma, AZ Yuma, AZ	0.8871

TABLE 9 — Wage Index for Rural Areas

Nonurban Area	Wage Index
Alabama	0.7637
Alaska	1.1637
Arizona	0.9140
Arkansas	0.7704
California	1.0297
Colorado	0.9368
Connecticut	1.1586
Delaware	0.9504
Florida	0.8789
Georgia	0.8247
Guam	0.9611
Hawaii	1.0522
Idaho	0.8826
Illinois	0.8341
Indiana	0.8736
Iowa	0.8550
Kansas	0.8088
Kentucky	0.7844
Louisiana	0.7291
Maine	0.9039
Maryland	0.9179
Massachusetts	1.0217
Michigan	0.8741
Minnesota	0.9339
Mississippi	0.7583
Missouri	0.7829
Montana	0.8701

Nebraska	0.9035
Nevada	0.9833
New Hampshire	0.9940
New Jersey 1/	.....
New Mexico	0.8529
New York	0.8403
North Carolina	0.8501
North Dakota	0.7743
Ohio	0.8760
Oklahoma	0.7537
Oregon	1.0050
Pennsylvania	0.8348
Puerto Rico	0.4047
Rhode Island 1/	.....
South Carolina	0.8640
South Dakota	0.8393
Tennessee	0.7876
Texas	0.7910
Utah	0.8843
Vermont	0.9375
Virginia	0.8480
Virgin Islands	0.7457
Washington	1.0072
West Virginia	0.8084
Wisconsin	0.9498
Wyoming	0.9182

1/ All counties within the State are classified urban.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act and section 311 of the BIPA, the payment rates listed here reflect an update equal to the full SNF market basket, which equals 2.8 percentage points. We will continue to disseminate the rates, wage index, and case-mix classification methodology through the **Federal Register** before August 1 preceding the start of each succeeding fiscal year.

E. Relationship of RUG-III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption under the current 44-group RUG-III classification system that beneficiaries who are correctly assigned to one of the upper 26 RUG–III groups in the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to that point.

A beneficiary assigned to any of the lower 18 groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 26 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

In this notice, we are continuing the existing designation of the upper 26 RUG-III groups for purposes of this administrative presumption, consisting of the following RUG-III classifications: All groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

F. Initial Three-Year Transition Period

As previously discussed in sections I.A and I.F.2 of this notice, the PPS is no longer operating under the initial three-year transition period from facility-specific to Federal rates. Therefore, payment now equals 100 percent of the adjusted Federal per diem rate.

G. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the XYZ SNF described in Table 10, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. XYZ's 12-month cost reporting period begins October 1, 2004. XYZ's total PPS payment would equal $25,161. The Labor and Non-labor columns are derived from Table 6. In addition, the adjustments for certain specified RUG-III groups enacted in section 101(a) of the BBRA (as amended by section 314 of the BIPA) remain in effect, and are reflected in Table 10.

Table 10

SNF XYZ: Located in State College, PA
Wage Index: 0.8482

RUG Group	Labor	Wage index	Adj. labor	Non-Labor	Adj. rate	Percent adjustment	Medi-care Days	Pay-ment
RVC	$274.56	0.8482	$232.88	$85.65	$318.53	$339.87*	14	$ 4,758
RHA	$212.18	0.8482	$179.97	$66.19	$246.16	$262.65*	16	$ 4,202
CC2	$175.71	0.8482	$149.04	$54.82	$203.86	$464.80**	10	$ 4,648
SSC	$176.74	0.8482	$149.91	$55.13	$205.04	$246.05***	30	$ 7,382
IA2	$119.84	0.8482	$101.65	$37.39	$139.04	$139.04	30	$ 4,171
						Total	100	$25,161

*Reflects a 6.7 percent adjustment from section 314 of the BIPA.

**Reflects a 128 percent adjustment from section 511 of the MMA. Section 101(a) of the BBRA no longer applies because of the MMA section 511 adjustment.

III. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish an SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This notice incorporates the latest available projections of the SNF market basket index. Accordingly, we have developed an SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the July 31, 2001 **Federal Register** (66 FR 39562), we included a complete discussion on the rebasing of the SNF market basket to FY 1997. There are 21 separate cost categories and respective price proxies. These cost categories were illustrated in Tables 10.A, 10.B, and Appendix A, along with other relevant information, in the July 31, 2001 **Federal Register**.

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 11 summarizes the updated labor-related share for FY 2005.

Table 11 – FY 2005 Labor-Related Share

	Relative importance, labor-related, **FY 2004** (97 index)	Relative importance, labor-related, **FY 2005** (97 index)
Wages and salaries	55.115	54.720
Employee benefits	11.304	11.595
Nonmedical professional fees	2.651	2.688
Labor-intensive services	4.130	4.125
Capital-related	3.172	3.094
Total	76.372	76.222

A. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, as described in the previous section, from the average of the prior fiscal year to the average of the current fiscal year. For the Federal rates established in this notice, the percentage increase in the SNF market basket index is used to compute the update factor occurring between FY 2004 and FY 2005. We used the Global Insight, Inc. (formerly DRI-WEFA), 2nd quarter 2004 forecasted percentage increase in the FY 1997-based SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factor. Finally, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the three-year transition period from facility-specific to full Federal rates that started with cost reporting periods beginning in July of 1998 has expired.

B. Market Basket Forecast Error Adjustment

As discussed in the June 10, 2003, supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003, final rule (68 FR 46067), the regulations at 42 CFR 413.337(d)(2) provide for an adjustment to account for market basket forecast error. The initial adjustment applied to the update of the FY 2003 rate that occurred in FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available fiscal year for which there is final data, and are applied whenever the difference between the forecasted and actual change in the market basket exceeds a 0.25 percentage point threshold. As discussed previously in section I.G of this notice, as the difference between the estimated and actual amounts of increase in the market basket index for FY 2003 (the most recently available fiscal year for which there is final data) did not exceed the 0.25 percentage point threshold, the payment rates for FY 2005 do not include a forecast error adjustment.

C. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(IV) of the Act requires that the update factor used to establish the FY 2005 Federal rates be at a level equal to the full market basket percentage change. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2003 through September 30, 2004 to the average market basket level for the period of October 1, 2004 through September 30, 2005. Using this process, the market basket update factor for FY 2005 SNF Federal rates is 2.8 percentage points. We used this revised update factor to compute the Federal portion of the SNF PPS rate shown in Tables 2 and 3.

IV. Consolidated Billing

As established by section 4432(b) of the BBA, the consolidated billing requirement places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. Section 103 of the BBRA amended this provision by further excluding a number of individual services, identified by Healthcare Common Procedure Coding System (HCPCS) code, within several broader categories that otherwise remained subject to the provision. Section 313 of the BIPA further amended this provision by repealing its Part B aspect; that is, its applicability to services furnished to a resident during an SNF stay that Medicare does not cover. (However, physical, occupational, and speech-language therapy remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.)

Among the services that sections 1888(e)(2)(A)(ii) through (iii) of the Act exclude from the consolidated billing requirement are those of physicians and certain other specified types of medical practitioners, which remain separately billable to Part B when furnished to an SNF's Part A resident. Since the statute does not exclude the services of rural health clinics (RHCs) or Federally Qualified Health Centers (FQHCs), we have always regarded those specified types of practitioner services, when furnished to an SNF's Part A resident by an RHC or FQHC, as being a part of RHC or FQHC services (which are subject to consolidated billing). However, section 410 of the MMA amended section 1888(e)(2)(A)(iv) of the Act to specify that when an RHC or FQHC furnishes the services of a physician, or another type of service that section 1888(e)(2)(A)(ii) of the Act identifies as being excluded from SNF consolidated billing, those services do not become subject to consolidated billing merely by virtue of being furnished under the auspices of the RHC or FQHC. In effect, this amendment enables such services to retain their separate identity as excluded ''practitioner'' services in this context, rather than being treated as bundled ''RHC'' or ''FQHC'' services. As such, these services would remain separately billable to Part B when furnished to a resident of the SNF during a covered Part A stay. The MMA specifies that this provision becomes effective with services furnished on or after January 1, 2005. In accordance with added section 1888(e)(2)(A)(iv) of the Act, this provision applies to the following excluded service categories,

as identified in section 1888(e)(2)(A)(ii) of the Act:

- Physician services.
- Services of physician assistants working under a physician's supervision.
- Services of nurse practitioners and clinical nurse specialists working in collaboration with a physician.
- Certified nurse-midwife services.
- Qualified psychologist services.
- Certified registered nurse anesthetist services.
- Home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies as described in section 1861(s)(2)(F) of the Act.
- Erythropoietin (EPO) for certain dialysis patients as described in section 1861(s)(2)(O) of the Act, subject to methods and standards established by the Secretary in regulations for its safe and effective use (see §§ 405.2163(g) and (h)).

Further, we note that the amendment enacted in section 410 of the MMA does not affect the applicability of the consolidated billing requirement to any physical, occupational, or speech-language therapy services furnished by RHCs and FQHCs. As specified in section 1888(e)(2)(A)(ii) of the Act, such services are *always* subject to SNF consolidated billing, even when performed by a type of practitioner whose services would otherwise be excluded from this provision.

V. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In accordance with section 1888(e)(7) of the Act (as amended by section 203 of the BIPA), Part A pays critical access hospitals (CAHs) on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, as noted previously in section I.A of this notice, the services furnished by non-CAH rural hospitals are paid under the SNF PPS. In the July 31, 2001 final rule (66 FR 39562), we announced the conversion of swing-bed rural hospitals to the SNF PPS, effective with the start of the provider's first cost reporting period beginning on or after July 1, 2002. We selected this date consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the SNF transition period, June 30, 2002.

As of June 30, 2003, all swing-bed rural hospitals have come under the SNF PPS. Therefore, all rates and wage indexes outlined in earlier sections of this notice for SNF PPS also apply to all swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS and the transmission software, Raven-SB for Swing Beds can be found in the July 31, 2001 final rule (66 FR 39562). The latest changes in the MDS for swing-bed rural hospitals are listed on our SNF PPS Web site, *http://www.cms.hhs.gov/providers/snfpps/default.asp.*

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This notice is major, as defined in Title 5, United States Code, section 804(2), because we estimate the impact of the standard update will be to increase payments to SNFs by approximately $440 million.

The update set forth in this notice applies to payments in FY 2005. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of $11.5 million or less in any 1 year. For purposes of the RFA, approximately 53 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards with total revenues of $11.5 million or less in any 1 year (for further information, see 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity. In addition, approximately 29 percent of SNFs are nonprofit organizations.

This notice updates the SNF PPS rates published in the August 4, 2003 final rule (68 FR 46036) and the associated correction notice (68 FR 55882, September 29, 2003), thereby increasing aggregate payments by an estimated $440 million. As indicated in Table 12, the effect on facilities will be an aggregate positive impact of 2.8 percent. We note that some individual providers may experience larger increases in payments than others due to the distributional impact of the FY 2005 wage indices and the degree of Medicare utilization. While this notice is considered major, its overall impact is extremely small; that is, less than 3 percent of total SNF revenues from all payor sources. As the overall impact is positive on the industry as a whole, and on small entities specifically, it is not necessary to consider regulatory alternatives.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the payment rates set forth in this notice also affect rural hospital swing-bed services, we believe that this notice will have a positive fiscal impact on small rural hospitals. However, because this incremental increase in payments for Medicare swing-bed services is relatively minor in comparison to overall rural hospital revenues, this notice will not have a significant impact on the overall operations of these small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any

rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This notice will increase payments to SNFs by 2.8 percent, but will have no other substantial effect on State, local, or tribal governments. Again, we believe that the aggregate impact of this notice is positive, and does not meet the significance thresholds for determining added costs under the Unfunded Mandates Reform Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this notice will have no substantial effect on State and local governments.

B. Anticipated Effects

This notice sets forth updates of the SNF PPS rates contained in the August 4, 2003 final rule (68 FR 46036) and the associated correction notice (68 FR 55882, September 29, 2003). The impact analysis of this notice represents the projected effects of the changes in the SNF PPS from FY 2004 to FY 2005. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit, based on the latest available Medicare claims from 2002. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, the MMA, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with section 1888(e)(4)(E) of the Act, the payment rates for FY 2005 are updated by a factor equal to the full market basket index percentage increase to determine the payment rates for FY 2005. We note that in accordance with section 101(a) of the BBRA and section 314 of the BIPA, the existing, temporary increase in the per diem adjusted payment rates of 20 percent for certain specified RUGs (and 6.7 percent for certain others) remains in effect until the implementation of case-mix refinements in the SNF PPS. Similarly, the special AIDS add-on established by section 511 of the MMA remains in effect until the implementation of case-mix refinements. In updating the rates for FY 2005, we made a number of standard annual revisions and clarifications mentioned elsewhere in this notice (for example, the update to the wage and market basket indices used for adjusting the Federal rates). These revisions will increase payments to SNFs by approximately $440 million.

The impacts are shown in Table 12. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next twenty rows show the effects on urban versus rural status by census region. The final four rows show the effects on facilities by ownership type.

The second column in the table shows the number of facilities in the impact database.

The third column of the table shows the effect of the annual update to the wage index. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column of the table shows the effect of all of the changes on the FY 2005 payments. The market basket increase of 2.8 percentage points is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 2.8 percent in total, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the combined effects of all of the changes vary by specific types of providers and by location.

Table 12
Projected Impact of FY 2005 Update to the SNF PPS

	Number of facilities	Wage Index Change	Total FY 2005 change
Total	15,252	0.0%	2.8%
Urban	10,016	0.0%	2.8%
Rural	5,236	0.0%	2.8%
Hospital based urban	984	0.1%	2.9%
Freestanding urban	8,466	0.0%	2.8%
Hospital based rural	640	0.1%	2.9%
Freestanding rural	3,708	0.0%	2.8%
Urban by region			
New England	913	-0.6%	2.2%
Middle Atlantic	1,526	-0.7%	2.1%
South Atlantic	1,610	0.3%	3.1%
East North Central	1,943	0.2%	3.0%
East South Central	456	0.0%	2.8%
West North Central	691	0.4%	3.2%
West South Central	965	0.8%	3.6%
Mountain	432	-0.4%	2.4%
Pacific	1,473	0.4%	3.2%
Rural by region			
New England	149	0.1%	2.9%
Middle Atlantic	254	-0.4%	2.4%
South Atlantic	715	-0.2%	2.6%
East North Central	948	0.1%	2.9%
East South Central	595	-0.4%	2.4%
West North Central	1,220	0.5%	3.3%
West South Central	817	0.4%	3.2%
Mountain	330	-0.2%	2.6%
Pacific	208	0.0%	2.8%
Ownership			
Government	712	0.0%	2.8%
Proprietary	9,457	0.0%	2.8%
Voluntary	3,605	0.0%	2.8%

C. Alternatives Considered

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the RUG-III payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995.) In accordance with the statute,

we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates. Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new fiscal year through the **Federal Register**, and to do so before the August 1 that precedes the start of the new fiscal year. Accordingly, we are not pursuing alternatives with respect to the payment methodology. Further, as discussed previously in section II.B of this notice, we are not implementing case-mix refinements at the present time, but instead are proceeding with our ongoing research in this area.

D. Conclusion

This notice does not initiate any policy changes with regard to the SNF PPS; rather, it simply provides an update to the rates for FY 2005. Therefore, for the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act, because we have determined that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VIII. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We believe it is unnecessary to undertake notice-and-comment rulemaking in this instance, as the statute requires annual updates to the SNF PPS rates, the methodologies used to update the rates have been previously subject to public comment, and this notice initiates no policy changes with regard to the SNF PPS but simply reflects the application of previously established methodologies. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: June 24, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 27, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–17443 Filed 7–29–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4068–N]

Medicare Program; Open Public Meeting Regarding the Development of the Model Guidelines for Categories and Classes of Drugs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting to provide pharmaceutical benefit managers and other interested parties, an opportunity to provide individual comments on the Model Guidelines for Classes and Categories of Drugs (Model Guidelines) developed by the United States Pharmacopeia (USP). Interested parties include beneficiaries, advocacy groups, managed care organizations, trade and professional associations, prescription drug plans, healthcare practitioners, providers, pharmaceutical manufacturers, and others. USP is a nongovernmental organization, as set forth under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The MMA provides for the development of Model Guidelines by USP in consultation with pharmaceutical benefit managers and other interested parties.

DATES: The meeting is scheduled for August 27, 2004, from 9 a.m. until 4 p.m. e.d.t. This meeting is open to the public.

ADDRESSES: The meeting will be held in Baltimore, MD at the Wyndham Baltimore-Inner Harbor, 101 West Fayette Street. Phone: 410–752–1100. The meeting will be organized by the United States Pharmacopeia with support from its meeting coordinator, Conferon Inc.

FOR FURTHER INFORMATION CONTACT: Kelly Coates, United States Pharmacopeia at 12601 Twinbrook Parkway, Rockville, MD 20852, *conferences@usp.org*, (301) 816–8130.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) establishes a new prescription drug benefit under Part D of the Medicare Program through competing prescription drug plans. The Secretary will approve or disapprove prescription drug plans based on various requirements in the statute, including the requirements specified in section 1860D–11(e)(2)(D)(i) and (ii) of the MMA. One of the requirements is that the Secretary does not find that the design of the plan and its benefits are likely to discourage enrollment by certain Part D eligible individuals. The Secretary may not find that the design of categories and classes within a formulary discourages enrollment if the categories and classes are consistent with Model Guidelines established by United States Pharmacopeia (USP).

In an effort to establish these guidelines, MMA requires the Secretary to request USP to develop, in consultation with pharmaceutical benefit managers and other interested parties, a list of categories and classes (Model Guidelines) that may be used by prescription drug plans and to revise the classification from time to time to reflect changes in therapeutic uses of covered Part D drugs and additions of new covered Part D drugs. At the request of the Secretary and as specified in section 1860D–4(b)(3)(C)(ii) of the MMA, USP is in the process of developing the Model Guidelines that may be used by prescription drug plans and is seeking comments on the draft Model Guidelines.

II. Provisions of the Notice

The purpose of this meeting is to provide information on the draft of the Model Guidelines for Classes and Categories of Drugs to be used in Part D plan formularies and to allow for public comment.

Meeting Format: USP Staff and the USP Medicare Model Guideline Expert Committee (Expert Committee) will present a draft of the Model Guidelines and the approach and methodology of establishing the Model Guidelines. Interested persons may present data, information, or views orally or in writing, on issues directly related to the Model Guidelines.

Public Presentations: USP and the Expert Committee Members will hear oral presentations from the public. The Expert Committee may limit the number and duration of oral presentations to the time available. If you wish to make a formal oral presentation, you must contact the individual named in the **FOR FURTHER INFORMATION CONTACT** section of this notice and submit the following by August 20, 2004: a brief statement of the general nature of the comment, the name and address of proposed individual to present, and approximate time needed for the presentation. All presenters must submit written documentation of their oral presentation. USP will determine the time allotments for oral presentations based upon the number of presenters. If additional time is available, USP and the Expert Committee will open the floor to additional comments by attendees. An agenda for the meeting will be posted on USP's website approximately two weeks prior to the meeting.

Public Written Comment: Comments on the draft Model Guidelines and associated documents must be mailed to Lynn Lang, United States Pharmacopeia, 12601 Twinbrook Parkway, Rockville, Maryland 20852–1790, *lfl@usp.org*, by September 10, 2004. Comments must clearly identify the individual or organization submitting the comment and must be clearly marked as ''Comments to the Draft Model Guidelines.'' Comments may be submitted either in paper or in electronic format. USP will post all comments on its Web page for public viewing.

Registration: Registration for this public meeting is required and will be on a first-come, first-served basis up to the 500 person capacity of the meeting room. There is no charge for registration. The registration deadline will be August 20, 2004. Registration may be accomplished by visiting *www.usp.org/conferences* or you may call United States Pharmacopeia's meeting coordinator, Conferon Inc. at (330) 425–9330. A confirmation notice will be sent to attendees upon finalization of registration. Individuals who are not registered in advance will not be guaranteed attendance due to space limitations.

Written Requests Concerning the Public Meeting: USP will accept written questions about meeting logistics or requests for the Draft Model Guidelines before the meeting. Written submissions must be sent to: Kelly Coates, United States Pharmacopeia, at e-mail *ktc@usp.org*.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 21, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–17237 Filed 7–29–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Funding Opportunity Title: Child Development Research Fellowship Program

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OPRE–PH–0005.

CFDA Number: 93–595.

Due Date for Applications: August 30, 2004.

Due Date for Letters of Intent: N/A.

I. Funding Opportunity Description

A. Purpose

The purpose of this priority area is to announce the availability of funds for a cooperative agreement to sponsor a Child Development Research Fellowship that will allow child development professionals from the academic community the opportunity to actively participate in policy-relevant research activities associated with ACF programs. The goal of the fellowship program is to expose researchers to a policy environment and thereby to expand and enrich the field's capacity for policy-relevant research. Fellows will be able to work on-site in OPRE or an ACF-related office on research related to ACF programs on a full-time basis for a period of up to two years (renewable for a third year at the discretion of the sponsoring organization and ACF). The program is intended to stimulate the active exchange of child development research and evaluation information directly relevant to ACF programs and to inform the process of developing long-term research and evaluation agendas across the various ACF programs and in the research community at large. The cooperative agreement will require active partnership between the sponsoring organization and the Office of Planning, Research and Evaluation (OPRE).

B. Background

Section 1110 (42 U.S.C. 1310) (a) (1) of the Social Security Act authorizes funding for conducting research related to programs carried on or assisted through the Social Security Act, or related programs. The Office of Planning, Research and Evaluation engages in a number of research and evaluation efforts related to low income children and families, including research with Head Start, Child Care, Child Welfare, and at-risk youth populations as well as research on the impact of welfare policies on families and children. Such research efforts typically are large in scale, and are interdisciplinary in their design, implementation, and analysis. As such, they benefit from expertise provided by multidisciplinary teams.

For more than a decade, Child Development Fellowships have been offered through ACF under the sponsorship of the Society for Research in Child Development. For the past five years, these fellowships have been supported through a cooperative agreement between ACF and SRCD. Child Development Fellows have contributed substantially to research efforts related to child development and programmatic outcomes for children and families in Head Start, Child Care, and Child Welfare programs.

C. Priorities

The Fellowships have resulted in a range of activities that have been of considerable benefit to the Fellows, ACF, and to the field of early childhood development and education. The successful applicant will work with ACF to ensure that the kinds of activities and opportunities that have proven beneficial in the past continue to be available. These activities have included active participation in the technical conceptualization, planning, implementing and coordinating of major research and evaluation activities across ACF programs; identifying opportunities for increased program effectiveness through coordination of research and evaluation activities with other Departments and agencies; maintaining strong ties with both academic and practitioner communities; and actively contributing to the theoretical and empirical knowledge base within the areas of child development and social services programs, among other activities. The Fellows have benefited not only from the direct experience of working in a policy environment, but also through planned activities with the sponsoring organization for Fellows from other

agencies and Congressional Offices (including opportunities to attend policy briefings and Congressional hearings), and through exposure to the scientific activities and resources of the sponsoring organization.

It is anticipated that these types of activities would be continued under this announcement. The applicant should have standing in the child development research community that provides for visibility among potential candidates for the fellowships and that assures them of an experience that will enhance their professional development. Child Development Fellows at ACF historically have had access to a range of conferences, workshops and lectures designed for research/policy fellows, such as activities provided under the aegis of the American Association for the Advancement of Science. The applicant should have strong linkages with the policy and child development research communities upon which they can draw to provide appropriate experiences for the candidates, apart from their agency work activities.

The successful applicants will provide evidence of successful implementation of fellowship programs, that the organization has access to research professionals across a variety of disciplines related to child development, and that the organization has a proven record of being able to attract a pool of highly qualified applicants. The sponsoring organization will be expected to recruit a pool of highly qualified, doctoral-level candidates from which a final selection will be made by ACF, depending on the opportunities, needs, and resources of the agency.

Fellows will be provided with office space to work on-site either in OPRE or in an agency conducting ACF-related research, such as the Child Care Bureau, the Head Start Bureau or the Office of the Assistant Secretary for Planning and Evaluation within HHS. It is expected that the number of Fellows placed will vary from year to year, depending on the opportunities, needs and resources of the agency and the match between agency activities and the qualifications of available candidates; as many as six Fellows may be placed in a single year. The length of the placement will be for one year, with the option of a second year at the discretion of the agency. A third year may be possible in some circumstances; extension of a Fellowship for a third year shall be at the discretion of the sponsoring organization.

Federal staff expect to maintain substantial involvement in the implementation of the Fellowship program, as described below in Section II, Description of Federal Substantial Involvement with Cooperative Agreement.

II. Award Information

Funding Instrument Type: Cooperative Agreement.

Description of Federal Substantial Involvement with Cooperative Agreement: Federal staff will (1) select the Fellow or Fellows to be matched to the agency, from a pool of potential Fellows selected by the sponsoring organization; (2) provide work space including telephone and computer access; (3) take primary responsibility for project selection and for mentoring and supervision of the Fellow(s). Federal staff will work with the Fellow(s) and the sponsoring organization on developing goal statements for the Fellow(s) and on the evaluation of the Fellowships, and also will work with the sponsoring organization to develop criteria for the Fellowships and on advertising and promotional materials. The sponsoring organization will (1) recruit and screen candidates for Fellowships, and develop an initial pool of candidates; (2) provide exposure to additional scientific and professional development activities and other programming outside the agency; (3) provide group activities for Fellows to benefit from the experiences of one another; and (4) provide administrative support for the Fellowship program, including payment of stipends and reimbursements for travel and benefits, as well as support for individual Fellows' work activities.

Anticipated Total Program Funding: $3,000,000.

Anticipated Number of Awards: ACF anticipates funding one project for a period of up to five years.

Ceiling on Amount of Individual Awards: $600,000 per budget period, contingent on the number of Fellows placed. The award amount is for planning purposes only.

Floor of Individual Award Amounts: none.

Average Anticipated Award Amount: $500,000 per budget period.

Project Periods for Awards: Five years. Initial awards will be for the first one-year budget period. Requests for the second through fifth years of funding within the project period should be identified in the current application (on SF–424A), but such requests will be considered in subsequent years on a noncompetitive basis, subject to the applicant's eligibility status, the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

III. Eligibility Information

Eligible Applicants:

County governments, City or township governments, Special district governments, State controlled institutions of higher education, Native American tribal governments (Federally recognized), Non-profit organizations having a 501(c) (3) status with the Internal Revenue Code, other than institutions of higher education, Non-profit organizations that do not have 501 (c) (3) status with the Internal Revenue Code, other than institutions of higher education, Private institutions of higher education, For-profit organizations other than small businesses, Small businesses, and faith-based organizations.

Additional Information on Eligibility:

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Cost Sharing or Matching: Yes. Grantees must provide at least 1 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-federal share. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project with a total approved cost of $606,060, requesting $600,000 in ACF funds, must provide a non-federal share of at least $6,060 (1% of total approved project cost of $606,060). Grantees will be held

accountable for commitments of non-federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds.

The following example shows how to calculate the required 1% match amount for a $100,000 grant:

$100,000 (Federal share) divided by .99 (100%–1%) equals $101010 (total project cost including match) minus $100,000 (federal share) equals $1,010 (required 1% match)

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

Other:

All Applicants must have Dun & Bradstreet Number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applications that fail to follow the required format described in section IV.2 Application Requirements will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that exceed the $600,000 (per budget period) ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address to Request Application Package

ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original and 2 copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.Gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.Gov.:

- Electronic submission is voluntary
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.Gov that contains a Grants.Gov tracking number. The Administration for Children and Families will retrieve your application form Grants. Gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov*.
- You must search for the downloadable application package by the CFDA number.

Application Requirements

The application must be double-spaced and single-sided on 8½ x 11 plain white paper, with 1″ margins on all sides. The application must use Times New Roman 12 point font or Arial 12 point font. All pages of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered. Applications that do not follow the aforementioned stated criteria will be considered non-responsive and will not be eligible for funding under this announcement.

The Project Narrative including the Table of Contents must not exceed 50 pages. Pages submitted beyond the first 50 in the application project narrative section will be removed prior to panel review. The Narrative Budget Justification, Standard Forms for Assurances, Certifications, Disclosures and appendices and the cost-share letters are not included in this limitation, yet applicants are urged to be concise.

There is a 5-page limit to any additional supporting documentation, including letters of support. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required.

Applicants must demonstrate proof of non-profit status and this proof must be included in their applications. Applicants must include any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Forms and Certifications:

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part V. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications. The forms (Forms 424, 424A–B; and Certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm* under new announcements. Fill out Standard Forms 424 and 424A and the associated certifications and assurances based on the instructions on the forms.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.'' The forms are located on the web at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on August 30, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address:

ACYF Operations Center/OPRE Grant Review Team/ Xtria, LLC c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the following address:

ACYF Operations Center/OPRE Grant Review Team/ Xtria, LLC c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Narrative	Described in Section V of this Announcement.	Format described in Section V.	By application due date
SF 424, SF 424A, and SF 424B	Per required form.	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date
Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL).	Per required form.	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date
Environmental Tobacco Smoke Certification	Per required form.	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date

Additional Forms:

Private-non-profit organizations may submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants''.

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants	Per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming. Applicants from these jurisdictions need not take action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Number of Projects in Application

Each application may include only one proposed project.

Applicants are cautioned that the ceiling for individual awards is $600,000 per project period. Applications exceeding the $600,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in the later competition.

Pre-award costs are not allowable charges to the award.

6. Other Submission Requirements

Submission by Mail: Mailed applications shall be considered as meeting an announced deadline if they are received on or before 4:30 p.m., Eastern Standard Time on the closing date at the address below:

ACYF Operations Center/OPRE Grant Review Team/ Xtria, LLC c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Hand Delivery: Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before 4:30 p.m., EST on the deadline date. The following address must appear on the envelope/package containing the application with the note ''Attention: Child Development Fellowship Grants.'' Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to:

ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax.

Electronic Submission: Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

1. Criteria

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires *4/30/2007.* 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 following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe how the intermediary's assistance to faith-based and community organizations will increase their effectiveness, enhance their ability to provide social services, diversify their funding sources, and create collaborations to better serve those most in need.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criterion I: Organizational Profiles (Maximum: 50 points)

The extent to which the organization presents a proven track record in successfully administering a research fellowship program, including child development research fellowships.

The extent to which the organization demonstrates the capacity to access a multidisciplinary group of doctoral level researchers who are potential applicants.

The extent to which the organization demonstrates a history of relationships with scientific and policy organizations through which Fellows can access workshops, lectures, conferences, and other professional development activities consistent with a Child Development Research Fellowship experience.

It is expected that the principal investigator will be a doctoral level individual who has a demonstrated record of child development research. Applications will be evaluated on the extent to which they include a listing of key positions required to carry out the project, the individuals proposed to fill the positions, and a detailed description of the kind of work they will perform. Applications will also be evaluated on the extent to which evidence is provided demonstrating the staff's skill, knowledge, and experience in carrying out their assigned activities such as evidence that demonstrates not only staff's good technical skills, but also a clear record of working with the child development research community and supervising child development researchers.

Evaluation Criterion II: Approach (Maximum: 20 points)

The extent to which the applicant uses applicable methods and the proposed activities are logical, reasonable, well-conceived, and linked to the results and benefits expected. The extent to which the applicant demonstrates a clear and feasible strategy for identifying criteria for fellowships, accessing groups of potential candidates, recruiting and interviewing candidates, providing professional development opportunities, and administering the program.

Evaluation Criterion III: Objectives and Need for Assistance (Maximum: 10 points)

The extent to which the objectives of the proposed project are clearly stated and shown to address the issues related to administering a Child Development Research Fellowship Program.

The extent to which the Fellows selected for the program will receive professional development opportunities consistent with the agency's research needs as well as the Fellows' professional development goals.

Evaluation Criterion IV: Results or Benefits Expected (Maximum: 10 points)

The extent to which the specific goals of the project and the results and benefits proposed by the applicant are reasonable and likely, quantified, clearly linked to and supported by the proposed approach, and supportive of the stated goals under this announcement.

Evaluation Criterion V: Budget and Budget Justification (Maximum: 10 points)

Applications will be evaluated based on the extent to which they include a budget that is clear, easy to understand, and provides a detailed justification for the amount requested. Applicants should refer to the budget information presented in the Standard Forms 424 and 424A and to the budget justification instructions in section V. General Instructions for the Uniform Project Description.

2. Review and Selection Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, either from within or from outside the Federal government, will use the evaluation criteria listed in Part V of this announcement to review and score the applications. The results of this review will be a primary factor in making funding decisions. ACF may also solicit comments from Regional Office staff and other Federal agencies. ACF may consider a variety of factors in addition to the review criteria identified above, including geographic diversity/coverage and types of applicant organizations, in order to ensure that the interests of the Federal Government are met in making the final selections. Please note that applicants that do not comply with the requirements in the section titled ''Eligible Applicants'' will not be included in the review process.

Approved but Unfunded Applications: In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in the later competition.

Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

VI. Award Administration Information

1. Award Notices

Successful applicants will be notified through the issuance of a Financial Assistance Award notice that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, the budget period for which initial support is given, and the total project period for which support is provided. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail. Organizations whose applications will not be funded will be notified in writing by ACF.

2. Administrative and National Policy Requirements

45 CFR Parts 74 and 92.

3. Reporting Requirements

Programmatic Reports: Semi-annually and a final report is due 90 days after the end of the grant period.

Financial Reports: (SF–269 long form) Semi-annually and a final report is due 90 days after the end of the grant period.

Original reports and one copy should be mailed to: Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

VII. Agency Contacts

1. *Program Office Contact:*

ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

2. *Grants Management Office Contact:*

Sylvia Johnson, ACF Division of Discretionary Grants, 370 L'Enfant Promenade, Washington, DC 20447, 1 (202) 401–4524, E-mail: *sjohnson@acf.hhs.gov.*

VIII. Other Information

Applicants under this announcement are advised that subsequent sale and distribution of products developed under this grant will be subject to the Code of Federal Regulations, Title 45, part 74.

The use of secondary data analysis in order to refine and validate newly-developed measures in relation to already standardized measures is strongly advised.

Definitions:

Budget Period—for the purposes of this announcement, budget period means the 12-month period of time for which ACF funds are made available to a particular grantee (*e.g.*, beginning on September 16, 2004, and ending on September 15, 2005).

Project Period—for the purposes of this announcement, the project period is the same length as the budget period.

Dated: July 22, 2004.

Naomi Goldstein,

Acting Director, Office of Planning, Research, and Evaluation.

[FR Doc. 04–17339 Filed 7–29–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement Grants for Outreach To Target Populations Under Trafficking in Persons Program

AGENCY: U.S. Department of Health and Human Services, Administration for Children and Families (ACF), Office of Refugee Resettlement.

Funding Opportunity Title: Grants for Outreach to Target Populations under the Trafficking in Persons Program.

Announcement Type: Competitive Grant—Initial.

Funding Opportunity Number: HHS–2004–ACF–ORR–ZV–0006.

CFDA Number: 93.598.

Due Date for Applications: The due date for receipt of applications is September 28, 2004.

I. Funding Opportunity Description

The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) announces a new grant program under its Trafficking in Persons Program for projects to expand existing outreach activities to identify and counsel victims of a severe form of human trafficking, as defined by the

Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101).

A. Background

In 2000, the Trafficking Victims Protection Act (TVPA), Pub. L. 106–386, was enacted in response to the phenomenon of human exploitation overseas and on American soil. The TVPA was reauthorized in December, 2003, by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L 108–193.

Human trafficking is modern-day slavery. It occurs when the victims are compelled to engage in commercial sex or to provide labor by means of fraud, coercion or force. The crime of trafficking is often confused with human smuggling. The U.S. Department of Justice has provided the following explanation of the difference between smuggling and trafficking (66 FR 38513, 38515 (July 24,2001)):

> Federal law makes a distinction between alien smuggling—in which the smuggler arranges for an alien to enter the country illegally for any reason, including where the alien has voluntarily contracted to be smuggled—and severe forms of trafficking in persons. Unlike alien smuggling, as the following definition indicates, severe forms of trafficking in persons must involve both a particular means such as the use of force, fraud, or coercion, and a particular end such as involuntary servitude or a commercial sex act (with regards to a commercial sex act, however, the use of force, fraud, or coercion is not necessary if the person induced to perform a commercial sex act is under the age of 18). Pursuant to the TVPA, victims of severe forms of trafficking are persons who are recruited, harbored, transported, provided, or obtained for: (1) Labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or (2) the purpose of a commercial sex act in which such act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age. Aliens who are voluntarily smuggled into the United States, in most cases, will not be considered victims of severe forms of trafficking in persons. However, individuals who are smuggled into the United States in order to be used for labor or services may become victims of a severe form of trafficking in persons if, for example, after arrival the smuggler uses threats of serious harm or physical restraint to force the individual into involuntary servitude, peonage, debt bondage, or slavery. Federal law prohibits forced labor regardless of the victim's initial consent to work. This distinction between alien smuggling and severe forms of trafficking in persons is consistent with the separate treatment of the trafficking and smuggling issues internationally.

In response to the TVPA enactment, ORR modified in 2001 a standing announcement for social services to meet the needs of newly arriving refugees, to include services to victims of a severe form of trafficking. In February 2002, ORR further modified Category 3 of the existing standing announcement by removing services to victims of a severe form of trafficking in order to proceed with a new and separate announcement specifically aimed at promoting awareness about human trafficking and addressing the service needs of victims of a severe form of trafficking. That notice of modification was published in the **Federal Register** on February 8, 2002 (67 FR 6048).

On May 24, 2002, ORR published an announcement in the **Federal Register** (67 FR 36622) seeking applications in three categories of activities: to provide local/community outreach and/or services to victims of a severe form of trafficking (category 1); to provide technical assistance and training (category 2); and to provide information discovery for a national outreach/education campaign (category 3). Due to the positive response from that grant announcement, ORR decided to provide additional funding in Fiscal Year 2003 for category one activities ((to provide local/community outreach and/or services to victims of a severe form of trafficking)(67 FR 59855 (September 24, 2002)).

ORR intends to provide continuation funding, where appropriate, for trafficking grants awarded in FYs 2002 and 2003 for category 1 and category 2 grants. These grantees are continuing to provide benefits and services to victims of severe forms of trafficking who have certification and eligibility letters. As a result of the trafficking reauthorization, however, such benefits and services beginning on December 19, 2003, shall be provided to certain family members of trafficking victims who have received T visas and may also include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking.

While these grant opportunities helped to establish a network of service providers ready to assist victims of a severe form of trafficking, the pace of victim identification since passage of the TVPA has been slower than expected. The U.S. government estimates that 18,000—20,000 victims are trafficked into the United States each year, yet fewer than 500 victims have been certified for benefits since passage of the TVPA. Some of the difficulties in getting victims to come forward were anticipated by Congress, as described in the Findings section, section 102(b)(20)) of the TVPA:

> (20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

In order to increase the rate of victim identification, HHS has undertaken a public awareness campaign to promote awareness of the phenomenon of trafficking and of the programs available to aid victims of trafficking. As part of the campaign, ORR is sponsoring a trafficking information and referral hotline. Additionally, HHS now publishes the current announcement of a fourth category of trafficking grants, supporting outreach to populations among which trafficking victims are likely to be found, for the purpose of counseling victims to access the programs available to help them rebuild their lives while remaining in the United States. This category of grants differs from the category one grants, which supported generalized local/community outreach activities, because this category supports particularized direct outreach to target populations. ORR does not expect to publish any other trafficking grant opportunities during this fiscal year.

B. Program Purpose and Objectives

The purpose of the Outreach to Victims of Human Trafficking grant program is to increase the identification of trafficking victims, as defined by the TVPA, and to encourage victims to leave their trafficked condition by counseling them on the programs available to assist victims, by alerting local law enforcement where appropriate, and by connecting the victims with a qualified service provider prepared to assist victims of trafficking. This grant program seeks to provide financial assistance to existing programs of outreach to populations among which victims of human trafficking may be found (whether or not current activities to such populations pertain to trafficking). *It does not intend to support the initiation of a program by organizations not currently conducting such outreach.* Populations among which victims of trafficking may be found include, but are not limited to: prostitutes, persons engaged in sex entertainment, migrant farmer workers,

domestic or household employees, low wage industrial or factory workers, janitors, restaurant employees, and immigrant populations generally.

C. Definitions

These relevant definitions are taken from section 103 of the TVPA:

(1) SEVERE FORMS OF TRAFFICKING IN PERSONS-The term 'severe forms of trafficking in persons' means—

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(2) SEX TRAFFICKING—The term 'sex trafficking' means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(3) COMMERCIAL SEX ACT—The term 'commercial sex act' means any sex act on account of which anything of value is given to or received by any person.

(4) VICTIM OF A SEVERE FORM OF TRAFFICKING—The term 'victim of a severe form of trafficking' means a person subject to an act or practice described in paragraph (1).

(5) COERCION—The term 'coercion' means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of the legal process.

(6) DEBT BONDAGE—The term 'debt bondage' means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(7) INVOLUNTARY SERVITUDE—The term 'involuntary servitude' includes a condition of servitude induced by means of—

(A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(B) the abuse or threatened abuse of the legal process.

D. Legislative Authority

These grants are authorized by three provisions of law: section 106(b) of the Trafficking Victims Protection Act of 2000 (TVPA)(22 U.S.C. 7104(b)) as amended by section 4(a)(2)(B)(ii) of the Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. 108–193); section 107(b)(1)(B) of the TVPA; and section 412(c)(1)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1522(c)(1)(A)).

Section 106(b) of the TVPA provides: ''The President, acting through the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, and the Secretary of State, shall establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking.''

Section 107(b)(1)(B) of the TVPA provides that ''the Secretary of Health and Human Services * * * shall expand benefits and services to victims of severe forms of trafficking in persons in the United States and aliens classified as a nonimmigrant under section 101(a)(15)(T)(ii), without regard to the immigration status of such victims.'' The Reauthorization Act further amended this provision by adding, ''In the case of nonentitlement programs funded by the Secretary of Health and Human Services, such benefits and services may include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking.'' This provision anticipates activities to assist victims prior to HHS certification, which would otherwise be required in order for victims to access most federally-funded benefits.

Section 412(c)(1)(A) of the INA authorizes the Director ''to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other re-certification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.''

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: $1,000,000 in FY2005.

Anticipated Number of Awards: 15.

Ceiling on Amount of Individual Awards: $150,000 per project period.

An application received that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Anticipated Award Amount: $70,000 per project period.

Project Periods for Awards: These grants shall be for a project period of seventeen (17) months.

III. Eligibility Information

1. Eligible Applicants

Public, private for-profit and private nonprofit organizations, including faith-based organizations, are eligible to apply for any of these grants. For-profit entities are eligible to apply, although HHS funds may not be paid as profit to any recipient even if the recipient is a commercial organization (45 CFR 74.81). Any private nonprofit organization submitting an application must submit proof of its status in its application at the time of submission. The nonprofit agency can accomplish this by providing any of the following:

(a) A copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code;

(b) A copy of a currently valid IRS tax exemption certificate;

(c) A statement from a State taxing body, State Attorney General or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individual;

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status;

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

Additional Eligibility Considerations

The U.S. Government is opposed to prostitution and related activities,

which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their sub-grantees, cannot use U.S. Government funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their sub-grantees, that receive U.S. Government funds to fight trafficking in persons cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. It is the responsibility of the primary grantee to ensure these criteria are met by its sub-grantees. Accordingly, the grant application must include certification that no monies, if awarded, will be used for these unallowable purposes.

Applications must include copies of all written materials that will be provided to victims of severe forms of trafficking, including victims of sex trafficking, and these materials must be clear and appropriate. Materials not yet generated must be submitted to the project officer for review prior to reproduction. The application must include a clear and detailed description of services to be provided to victims of severe trafficking, including services to victims of sex trafficking.

Allowable Activities

The purpose of this program is to support direct, person-to-person contact, information sharing, counseling and other communication between agents of the grant recipient and members of a specified target population ''among which victims of trafficking may be found. Any activity which is integral to the development and execution of opportunities for such direct interaction is potentially allowable, except for activities declared to be unallowable below. In addition, the collection, organization and analysis of information regarding places and facilities where trafficking victims may be held or exploited is allowable. It is anticipated that applicants will make current clients or contacts aware of the phenomenon of human trafficking, and will debrief them regarding their knowledge of the existence of trafficking victims among fellow members of the population being served by the grant applicant.

Other examples of allowable activities include but are not limited to:

a. Outreach teams that engage target populations in places of dwelling and in outdoor fora such as parks, street corners/sidewalks, agricultural facilities, and other places of congregation;

b. Mobile canteens that bring food and personal sundries to members of a target population for the purpose of building rapport;

c. Informational outreach in low-income and immigrant communities to counsel members about the availability of supportive services or health care opportunities, or to provide legal counseling;

d. Ethnic-centered outreach efforts into particular immigrant populations for various other purposes (*e.g.*, educational, community development).

e. Other forms of on-site needs assessment and referral services, obviating the need for victims to make office visits.

This grant announcement is not intended to support the provision of more than incidental material benefit to outreach clients. For example, mobile health clinics may present an appropriate outreach opportunity, but this grant announcement would not be an appropriate funding vehicle for the underlying medical services—just for the incremental costs of seeking out victims of trafficking among the population already being served. Neither is this grant announcement appropriate for funding direct benefits to the victims after identification and rescue.

2. Cost Sharing or Matching

Cost sharing or matching funds are not required for applications submitted under this program announcement.

3. Other

All applicants must have a Dun & Bradstreet number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on of after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applications that fail to follow the required format described in section IV.2 Content and Form of Application Submission will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that exceed the $150,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

The program announcement and the application materials are available from either Antoinette Aqui or Emmett McGroarty, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade, SW., 6th Floor East, Washington, DC 20447, and from the ORR Web site at: *http://www.acf.hhs.gov/programs/orr.* For further information contact either Antoinette Aqui, (202) 401–4825, *aaqui@acf.hhs.gov* or Emmett McGroarty, (202) 401–5525, *emcgroarty@acf.hhs.gov.*

2. Content and Form of Application Submission

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. An application with an original signature and two clearly identified copies are required. Applicants must clearly indicate on the SF 424 the grant announcement number under which the application is submitted.

Application Forms—Applicants requesting financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Application materials including forms and instructions are also available from the Contact named in the preamble of this announcement.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Applicants have the option of omitting from the application copies

(not the original) specific salary rates or amounts for individuals specified in the application budget.

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Certifications, Assurances, And Disclosure Required For Non-Construction Programs—Applicants must sign and return the disclosure form, if applicable, with their applications. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a signed certification regarding lobbying with their applications, when applying for an award in excess of $100,000. Applicants who have used non-federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying.

Private non-profit organizations may voluntarily submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

The applicant must specify the metropolitan statistical area (MSA) in which activities will be conducted, and each application should be for activities in a single MSA, although multiple applications are welcome.

Length of Applications—Each application narrative should not exceed 10 pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. A table of contents and a project summary/abstract should be included but will not count in the page limitations. Organizations are encouraged to provide annual reports, which similarly will not be counted toward the page limit. Each page should be numbered sequentially, including the attachments and appendices. This limitation of 10 pages should be considered as a maximum, and not necessarily a goal. Application forms are not to be counted in the page limit.

Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on September 28, 2004.

Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline time and date at the: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Sylvia Johnson, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447. Applicants are responsible for mailing applications well in advance to ensure that applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., to the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, at the ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note ''Attention: Sylvia Johnson.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

What to submit	Required content	Required form or format	When to submit
SF424, SF424a, SF424B	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	By application due date.

What to submit	Required content	Required form or format	When to submit
Project Summary/Abstract	Summary of application request.	One page limit	By application due date.
Project Description	Responsiveness to evaluation criteria.	Format described in Review and Selection section. Limit 10 pages. Size 12 font, 1'' margins..	By application due date
Certification Regarding Lobbying and Disclosure of Lobbying Activities.	Per required form, if application for $100,000 or more.	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm*.	By application due date.

Additional Forms

Private non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-profit Grant Applicants	Per Required Form	*http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due Date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs'', and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities''. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, *etc.* does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html*.

5. Funding Restrictions

The applicant must specify the metropolitan statistical area (MSA) in which activities will be conducted, and each application should be for activities in a single MSA, although multiple applications are welcome.

Non-Allowable Activities

Funds will not be awarded to applicants for the purpose of engaging in activities of a distinctly political nature, activities designed exclusively to promote the preservation of a specific cultural heritage, or activities with an international objective (*e.g.*, activities related to events in the refugees' country of origin). Pursuant to the policies of the U.S. government, no funds awarded under this announcement may be used by recipient organizations or by their sub-grantees to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work.

No funds may be used to engage in illegal activities or in activities which give the impression of an intent to engage in illegal activities. No funds may be used to engage in inherently law enforcement type activities, such as surveillance or undercover detection. Outreach agents of the grant applicant may choose to use a name other than their own in the conduct of outreach activities, but they may not intentionally deceive others regarding the purpose and intent of their activities. Grant recipients must respect all applicable property rights in the conduct of their outreach. In the case of activities conducted at a place of public accommodation, grant recipients must comply with requirements made of other patrons. No funds may be used to patronize or otherwise benefit prostitution or sex entertainment establishments. No funds may be used for the purchase or distribution of contraceptives.

6. Other Submission Requirements

Electronic Address to Submit Applications: http://www.Grants.gov.

Submission by Mail: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of

Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Attention: Sylvia Johnson, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Hand Delivery: Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., to the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, at the ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note ''Attention: Sylvia Johnson.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

1. Criteria

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB control number 0970–0139. 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.

Effective applications will clearly explain how the receipt of a grant under this announcement will allow the organization to expand its existing outreach activities so as to identify and assist victims of trafficking among a specific population which is the object of outreach activities. Applications should clearly describe the population which will be targeted for outreach, and in which metropolitan statistical area activities will be conducted. Each application should be for program activities in a single metropolitan statistical area, although any organization may submit more than one application.

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''full project description.'' The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

The project summary/abstract is a concise description of the proposed project, including such factors as the location of the project (defined as a single MSA), the target population toward which outreach activities will be directed, the nature of the proposed outreach activities, and a brief description of the organization's experience with such outreach.

It is recommended that the full project description address these considerations:

Approach

The full project description should include a statement of the overall strategy and a detailed plan, including a clear description of how funds awarded under this announcement will be utilized to expand current outreach activities for the purpose of identifying victims of trafficking. The statement should justify the expectation that trafficking victims will be identified as the result of this expansion of activities. The nature of activities to be directed at victims of trafficking should be clearly described and some quantification of these activities provided. The plan should make clear how the proposed activities will be accomplished.

The project description should provide a plan for providing vital services to newly-liberated victims of trafficking, which may utilize other organizations (including current ORR trafficking program grantees and faith-based organizations) for service provision. Although funds for this program are not intended to provide such direct services, this plan will provide evidence that the applicant has carefully thought through the care of identified victims. Where partner organizations are proposed for this purpose, evidence of the partner's commitment is recommended, *i.e.*, by Memoranda of Understanding (MOUs) or similar documentation.

The project description should also provide a plan for liaison with local law enforcement agencies, so that the activities of the applicant will not interfere with local law enforcement actions, nor take local law enforcement agencies by surprise (the creation of an advisory committee which includes representatives of local and federal law enforcement agencies is an example of an appropriate mechanism for this purpose). And the plan should describe precautions to be taken to minimize the risk of physical harm of outreach workers.

Objectives and Need

The full project description should clearly describe the population currently being served through outreach activities, and explain the expectation that trafficking victims may be identified within that population. The nature of the current outreach program should be clearly described, and the expected incremental increase in activities attributable to a grant award described as well.

Results or Benefits Expected

The full project description should articulate the results and benefits to be achieved with quantifiable measures of success, and should explain how the award of funds are expected to impact these key indicators. Project outcomes should be proposed which are measurable and achievable within the grant project period; monitoring and information collection related to anticipated outcomes should be described.

Organizational Profiles

The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity and

planning activities, should be described in some detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, management of affiliates, and a staffing chart of an affiliate network. The qualifications of the organization, based on previous relevant experience, should be provided, and the expertise of project staff, both of the applicant and of affiliate agencies, as well as any volunteers, should be documented.

Budget and Budget Justification

A line item budget should be provided on the budget information form. This budget should be accompanied as necessary by a narrative justification, and should be reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. The budget narrative should describe how awarded funds will complement current outreach activities, and detail how the proposed outreach activities benefit from financial efficiencies or sunk costs of the existing outreach program. Planning for continuation of activities beyond the project period should be addressed.

2. Evaluation Criteria

Criterion One: Approach (Maximum 35 Points)

Factors:

Quality of the project plan (25 points)

Applications will be evaluated on the basis of a statement of strategy and a detailed plan, considering how funds awarded under this announcement will be utilized to expand current outreach activities for the purpose of identifying victims of trafficking. The likelihood of trafficking victims being identified as the result of this expansion of activities will be assessed. The clarity of the proposed activities and the reasonableness and feasibility of proposed activities and timeframes will be considered.

Protocol for Service Provision to Victims (5 points)

Applications will be evaluated for quality of consideration of how vital services will be provided to newly-liberated victims of trafficking, which may utilize other organizations (including current ORR trafficking program grantees and faith-based organizations) for service provision.

Protocol for Liaison with Law Enforcement Agencies (5 points)

Applications will be evaluated for existence and quality of a plan for liaison with local law enforcement agencies, so that the activities of the applicant will complement and not interfere with local law enforcement actions. Applications will be assessed for precautions to be taken to minimize the risk of physical harm of outreach workers.

Criterion Two: Objectives and Need (Maximum 20 Points)

Evaluations on this criterion will focus on the population proposed to be served through outreach activities (presumed to be a population currently being served by the applicant), and the justification provided for the expectation that trafficking victims will be identified within that population. The appropriateness of the current outreach for that population will also be considered.

Criterion Three: Results or Benefits Expected (Maximum 20 Points)

Applications will be evaluated for results and benefits expected to be achieved. In particular, the incremental impact of grant funding will be assessed in terms of the outcomes proposed. The degree to which intended outcomes are quantifiable and achievable will be considered. The quality of the proposed mechanism for measuring outcomes will be considered.

Criterion Four: Organizational Profiles (Maximum 10 Points)

Evidence of the organizational capability to achieve the proposed outcomes will be assessed under this criterion. Such capability is demonstrated by prior relevant experience, and by administrative and management features of the project, including a plan for fiscal and programmatic management of each activity and planning activities, are described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, management of affiliates, and a staffing chart of an affiliate network. Capability is also demonstrated through the presentation of qualifications of project staff, both applicant and affiliate agencies, as well as any volunteers.

Criterion Five: Budget and Budget Justification (Maximum 15 Points)

Applications will be evaluated for the degree to which the line item budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities. Consideration will also be given to synergies between the proposed grant and current activities, including the degree to which proposed outreach activities benefit from financial efficiencies or sunk costs of the existing outreach program.

3. Review and Selection Process

Initial ACF Screening—Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement; and (2) the applicant is eligible for funding.

Competitive Review and Evaluation Criteria: Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of evaluation criteria specified in Part I. The evaluation criteria were designed to assess the quality of a proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Selection of Grant Recipients: In general, the most highly rated applications will be funded first, to the extent of available funds. However, the Director of ORR reserves the right to award less or more than the funds described in this announcement. In the absence of worthy applications, the Director of ORR may decide not to make an award if this is deemed in the best interests of the government. The Director of ORR reserves the right to award grants after taking into consideration the geographic distribution of eligible recipients. The Director of ORR does not intend to award more than one grant per metropolitan statistical area for any particular target population, and the Director of ORR may insure that a grant is awarded for certain high priority metropolitan statistical areas. These high priority metropolitan statistical areas are those expected to have substantial trafficking activity, and are: Atlanta, Baltimore, Chicago, Dallas, Detroit, Fresno, Greensboro/Winston-Salem, Las Vegas, Los Angeles, Miami, Milwaukee, Minneapolis/St. Paul, New York, Newark, Orlando, Philadelphia/Camden, Phoenix, Portland, San Diego, San Francisco, Seattle, Tampa/St. Petersburg, and Washington DC. Funding availability for future years is at the Director's discretion.

Approved but Unfunded Applications: In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund

applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in the later competition.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds, granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

45 CFR part 74 or 45 CFR part 92.

3. Reporting Requirements

Programmatic Reports: Semi-annually, with a final report due 90 days after the end of the grant period.

Financial Reports: Semi-annually, with a final report due 90 days after the end of the grant period (using SF–269).

VII. Agency Contacts

Program Office Contact: Mr. Emmett McGroarty, Office of Refugee Resettlement, ACF, 370 L'Enfant Promenade, SW., 6th Floor East, Washington, DC 20447, 202.401.5525, e-mail: *emcgroarty@acf.hhs.gov.*

Grants Management Office Contact: Ms. Sylvia Johnson, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, 202.401.4524, e-mail: *syjohnson@acf.hhs.gov.*

VIII. Other Information

Additional information about the Trafficking in Persons Program can be found on our Web site, *http://www.acf.hhs.gov/trafficking.*

Dated: June 29, 2004.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement, Administration for Children & Families, U.S. Department of Health and Human Services.

[FR Doc. 04–17340 Filed 7–29–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Request for Applications for Grants for Opioid Treatment Program (OTP) Accreditation

Authority: Section 501(d)(5) of the Public Health Service Act.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of request for applications for grants for Opioid Treatment Program (OTP) accreditation.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is accepting applications for Fiscal Year 2005 grants to partially subsidize the cost of accreditation of Opioid Treatment Programs (OTPs). The purpose of these grants is to reduce the costs of basic accreditation education and accreditation/reaccreditation surveys (site visits) for OTPs participating in the accreditation process pursuant to Title 42 of the Code of Federal Regulations Part 8 (42 CFR Part 8).

DATES: Applications are due on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on program issues contact: Jacqueline Hendrickson, MSW, SAMHSA/CSAT, Division of Pharmacologic Therapies, 5600 Fishers Lane, Rockwall II, Suite 618, Rockville, MD 20857, Phone: (301) 443–1109; E-Mail: *jhendric@samhsa.gov.*

For questions on grants management issues contact: Kimberly Pendleton, SAMHSA/Division of Grants Management, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, Phone: (301) 443–6133; E-mail: *kpendlet@samhsa.gov.*

SUPPLEMENTARY INFORMATION:

Grants for Opioid Treatment Program (OTP) Accreditation

Short Title: Accreditation of OTPs (Initial announcement).

Request for Applications (RFA) No. TI 05–001

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243

Key Dates: Application Deadline, September 30, 2004.

Date of Issuance: July 2004.

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I. Funding Opportunity Description

1. Introduction

As authorized by Section 501(d)(5) of the Public Health Services Act, the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), announces the availability of Fiscal Year (FY) 2005 grants to partially subsidize the cost of accreditation of Opioid Treatment Programs (OTPs). The purpose of these grants is to reduce the costs of basic accreditation education and accreditation/reaccreditation surveys (site visits) for OTPs participating in the accreditation process pursuant to Title 42 of the Code of Federal Regulations Part 8 (42 CFR Part 8). A copy of 42 CFR Part 8 can be downloaded from *http://www.dpt.samhsa.gov/regulation.htm.* This Request for Applications (RFA) is a reissuance (with modifications) of RFA number TI 02–003 issued in October 2001.

The current CSAT accreditation grants program has provided funding for the first round of accreditation surveys for approximately 1100 OTPs by four grantees. Since the first grants were

awarded, two additional organizations have developed OTP accreditation standards and have become approved by SAMHSA to accredit OTPs. Accreditation and reaccreditation is an ongoing, continuous quality improvement process. Some OTPs need to be resurveyed within one year of achieving their first accreditation and others will need to become reaccredited within three years. Continuing efforts are needed to finalize the accreditations of the OTPs that have not achieved full accreditation and reaccredit those who currently have full accreditation at a minimum of every three years. In addition there are approximately 100 new OTPs that open each year that will be seeking accreditation from SAMHSA-approved accreditation bodies.

2. Expectations

The purpose of Opioid Treatment Program (OTP) Accreditation grants is to: (1) Reduce the costs of basic accreditation education and accreditation surveys and ongoing reaccreditation for OTPs; (2) ensure that new OTPs and OTPs that did not become fully accredited before the May, 19, 2004, regulatory target date become fully accredited under 42 CFR Part 8; and (3) ensure that OTPs maintain their accreditation by undergoing the reaccreditation process at least every 3 years.

OTPs are required to attain accreditation as a part of the process of SAMHSA certification. Certification is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. In order to maintain a full and current certification from SAMHSA, an OTP must:

- Meet Federal opioid treatment standards found in 42 CFR Part 8.12;
- Have been awarded an initial accreditation and subsequent reaccreditations (at least every 3 years) by a SAMHSA-approved accreditation body; and
- Comply with any other conditions for certification established by SAMHSA.

Grantees will be SAMHSA-approved accreditation bodies and will be expected to:

- Prepare OTPs for accreditation through education;
- Conduct accreditation/reaccreditation surveys using a peer review process;
- Report accreditation/reaccreditation survey findings to OTPs and to SAMHSA. Use these survey findings for constructive feedback to OTPs;
- Follow-up to ensure corrective action has been taken to optimize program functioning and treatment processes and to improve patient outcomes for the targeted population, that is, persons addicted to opiates;
- Conduct ''for cause'' surveys of OTPs at the request of SAMHSA. ''For cause'' surveys are required to follow up on allegations of regulatory noncompliance or a pattern of complaints about an OTP.

A copy of the CSAT Guidelines for the Accreditation of Opioid Treatment Programs can be downloaded from *http://www.dpt.samhsa.gov/regulation.htm.*

Goals for this program include maintaining accreditation in over 1100 OTPs nationwide. Accreditation provides OTPs with the opportunity to establish or improve methods of continuous quality improvement and to underscore best practices in the field of opioid treatment. In addition, accreditation is focused on improving OTP administration and management, which presently varies widely. Other goals include increasing staff retention; providing significantly more opportunities for OTP staff training; making comprehensive services more available; making emergency services more available; increasing patient access to treatment, and improving positive patient outcomes. Being approved by a nationally recognized accreditation organization will give increased credibility to programs, remove some of the stigma frequently associated with this treatment modality, and make OTPs a part of the mainstream health care system.

2.1 Data and Performance Measurement/Government Performance and Results Act

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or ''GPRA'') requires all Federal agencies to set program performance targets and report annually on the degree to which the previous year's targets were met. Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures and justify requests for funding. To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, ''GPRA data'') from grantees. Grantees are required to report these GPRA data to SAMHSA on a timely basis.

In addition to providing data on the four measures listed below, you must collect GPRA baseline (end of event) data and 30-day follow-up to the event (with a minimum 80% of all baseline participants followed up) on all participants at Knowledge Application training events. CSAT's GPRA Training (baseline and follow-up) Survey forms can be found at *http://www.csat-gpra.samhsa.gov.* Click on General Information for CSAT's GPRA Strategy, then click on Data Collection Tools/Instructions, click on Knowledge Application Program, then click on Data Collection Tools. GPRA data must be entered into CSAT's GPRA Data Entry and Reporting System at *http://www.csat-gpra.samhsa.gov.* Training and technical assistance on data collecting, tracking and follow-up as well as data entry, will be provided by CSAT.

(1) Number of OTPs that have submitted applications for surveys;

(2) Number of OTPs receiving accreditation surveys/site visits with assistance from this grant;

(3) Results of each OTP accreditation survey supported by this grant; and

(4) Percentage of OTP sponsors or directors satisfied with the accreditation process.

(**Note:** This information on satisfaction with the accreditation process shall be collected from ongoing assessments developed and conducted independently by grantee organizations as a usual and customary part of the accreditation process.)

The terms and conditions of the grant award also will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

2.2 Grantee Meetings

Your Project Director must plan to participate in two joint grantee meetings each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be up to two days, and attendance is mandatory. One meeting will usually be held in the Washington, DC, area. The second meeting will be held in connection with another appropriate national meeting such as the American Association for Treatment of Opioid Dependence Conference.

II. Award Information

1. Award Amount

It is expected that up to $2,000,000 will be available to fund up to 6 awards in FY 2005. The amount of an individual award is expected to range between $15,000 and $1,000,000 in total costs (direct and indirect) per year for 3 years. The maximum allowable annual award is $1,000,000 in total costs. The

amount of an award will be determined by an estimate of the number of OTPs the grantee is expected to accredit/reaccredit. For example, SAMHSA-approved accreditation bodies that are State organizations will only accredit OTPs in their State. These currently total less than 20 OTPs. Other accrediting body applicants will estimate the number of OTPs already planned for or expected to apply for accreditation or reaccreditation in their grant applications. During each triennial accreditation cycle, OTPs are permitted to change accreditation bodies in some circumstances. Award amounts will be determined based on the information provided in the application and an equitable distribution will be determined during the award decision-making process.

When preparing your budget, you must adhere to the following guidelines/limitations:

—Basic OTP accreditation and reaccreditation education is limited to $1,000 or less per OTP.

—The actual cost of conducting site visits for accreditation, reaccreditation, monitoring purposes or ''for-cause'' visits is limited to $4,000 or less per site visit.

Proposed budgets cannot exceed the allowable amount in any year of the proposed project.

This program is being announced prior to the annual appropriation for FY 2005 for SAMHSA's programs, with funding estimates based on the President's budget request for FY 2005.

Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2005 to permit funding of a reasonable number of applications hereby solicited. All applicants are reminded, however, that we cannot guarantee that sufficient funds will be appropriated to permit SAMHSA to fund any applications.

Annual continuations will depend on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

2. Funding Mechanism

Awards for this funding opportunity will be made as grants.

III. Eligibility Information

1. Eligible Applicants

Only SAMHSA approved accreditation bodies are eligible applicants. This is because under Federal regulation, ''The Final Rule on Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction'' (42 CFR Part 8), private nonprofit organizations or State governmental agencies, or political subdivisions thereof, must be approved by SAMHSA in order to conduct accreditation processes and site visits with opioid treatment programs (OTPs). Therefore, grant applications from organizations that have not met the regulatory requirements, i.e., have not been approved by SAMHSA as an accreditation body, will not be considered for an award. At present, the only six eligible applicants are the following SAMHSA-approved accreditation bodies: CARF, The Rehabilitation Accreditation Commission; the Council on Accreditation; the Joint Commission on Accreditation of Healthcare Organizations; the Division of Alcohol and Substance Abuse, Washington Department of Social and Health Services; the Division of Alcohol and Drug Abuse, State of Missouri; and the National Commission on Correctional Health Care. Current grantees whose OTP accreditation projects end on or before April 14, 2005, are eligible to apply under this program.

2. Cost Sharing

Cost sharing is not required in this program, and applications will not be screened out on the basis of cost sharing. However, you may include cash or in-kind contributions in your proposal as evidence of commitment to the proposed project.

3. Other

Applications must comply with the following requirements: Use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.)

1. Address To Request Application Package

Required application forms and guidelines are being provided to all eligible applicants. You also may download the required documents from the SAMHSA Web site at *http://www.samhsa.gov.* Click on ''grant opportunities.''

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.,* guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1.
- Request for Applications (RFA)—Includes instructions for the grant application. This document is the RFA.

You must use the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

☐ Face Page—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [Note: Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]

☐ Abstract—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.

☐ Table of Contents—Include page numbers for each of the major sections of your application and for each appendix.

☐ Budget Form—Use SF 424A, which is part of the 5161–1. Fill out Sections B, C, and E of the SF 424A.

☐ Project Narrative and Supporting Documentation—The Project Narrative describes your project. It consists of Sections A through C. These sections in total may not be longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in ''Section V—Application Review Information'' of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections D through G. There are no page limits for these sections, except for Section F, Biographical Sketches/Job Descriptions.

• Section D—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.

• Section E—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project.

• Section F—Biographical Sketches and Job Descriptions.

○ Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a position description and/or a letter of commitment with a current biographical sketch from the individual.

○ Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

○ Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• Section G—Confidentiality and SAMHSA Participant Protection/Human Subjects. Section IV–2.4 of this document describes requirements for the protection of the confidentiality, rights and safety of participants in SAMHSA-funded activities. This section also includes guidelines for completing this part of your application.

☐ Appendices 1 through 3—Use only the appendices listed below. Do not use more than 30 pages for Appendices 1 and 2. Do not use appendices to extend or replace any of the sections of the Project Narrative. Reviewers will not consider them if you do.

• *Appendix 1:* Data Collection Instruments/Interview Protocols

• *Appendix 2:* Sample Consent Forms

• *Appendix 3:* Copy of your Accreditation Standards Manual, including OTP standards

☐ Assurances—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1.

☐ Certifications—Use the ''Certifications'' forms found in PHS 5161–1.

☐ Disclosure of Lobbying Activities—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes ''grass roots'' lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

☐ Checklist—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements.

☐ Information provided must be sufficient for review.

☐ Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

☐ Paper must be white paper and 8.5 inches by 11.0 inches in size.

☐ To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 25-page limit for the Project Narrative.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 25. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

☐ The page limitation for Appendices 1 and 2 cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Following these guidelines will help reviewers to consider your application.

☐ Pages should be typed single-spaced with one column per page.

☐ Pages should not have printing on both sides.

☐ Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

☐ Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

Applicants must describe procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section G of the application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of the application may result in the delay of funding. If one or all of the following seven areas are not relevant to your project, you must document the reasons.

Confidentiality and Participant Protection:

All applicants *must* describe how they will address the requirements for

each of the following elements relating to confidentiality and participant protection.

1. Protect Clients and Staff From Potential Risks

- Identify and describe any foreseeable physical, medical, psychological, social, and legal risks or potential adverse effects as a result of the project itself or any data collection activity.
- Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.
- Identify plans to provide guidance and assistance in the event there are adverse effects to participants.
- Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. Fair Selection of Participants

- Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other targeted groups.
- Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, and individuals who are likely to be particularly vulnerable to HIV/AIDS.
- Explain the reasons for *including or excluding* participants.
- Explain how you will recruit and select participants. Identify who will select participants.

3. Absence of Coercion

- Explain if participation in the project is voluntary or required. Identify possible reasons why participation is required, for example, court orders requiring people to participate in a program.
- If you plan to compensate participants, state how participants will be awarded incentives (*e.g.*, money, gifts, etc.).
- State how volunteer participants will be told that they may receive services intervention even if they do not participate in or complete the data collection component of the project.

4. Data Collection

- Identify from whom you will collect data (e.g., from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.,* school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.
- Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.
- Provide in Appendix 1, ''Data Collection Instruments/Interview Protocols,'' copies of *all* available data collection instruments and interview protocols that you plan to use.

5. Privacy and Confidentiality

- Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.
- Describe:
  - How you will use data collection instruments.
  - Where data will be stored.
  - Who will or will not have access to information.
  - How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. Adequate Consent Procedures

- List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.
- State:
  - Whether or not their participation is voluntary.
  - Their right to leave the project at any time without problems.
  - Possible risks from participation in the project.
  - Plans to protect clients from these risks.
- Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must obtain *written* informed consent.

- Indicate if you will obtain informed consent from participants or assent from minors along with consent from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?
- Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 2, ''Sample Consent Forms'', of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

- Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?
- Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. Risk/Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

Applicants may have to comply with the Protection of Human Subjects Regulations (45 CFR 46), depending on the evaluation and data collection requirements of the particular funding opportunity for which the applicant is applying or the evaluation design proposed in the application.

Applicants must be aware that even if the Protection of Human Subjects Regulations do not apply to all projects funded under a given funding opportunity, the specific evaluation design proposed by the applicant may require compliance with these regulations.

Applicants whose projects must comply with the Protection of Human

Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and that IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the Web at *http://www.hhs.gov/ohrp.* You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

3. Submission Dates and Times

The deadline for submission of applications for specific funding opportunities is September 30, 2004. Your application must be received by the application deadline. Applications sent through postal mail and received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

The purpose of the ''Accreditation of OTPs'' program is to partially subsidize the cost of the accreditation of opioid treatment programs. Grants are intended to reduce the costs of basic accreditation education and accreditation/reaccreditation surveys (site visits) for OTPs participating in the accreditation process pursuant to Title 42 of the Code of Federal Regulations Part 8 (42 CFR Part 8). None of the six eligible applicants (*i.e.*, SAMHSA-approved Accreditation bodies pursuant to 42 CRF Part 8) will be providing direct substance abuse treatment services and four of the six will be performing accreditation surveys at opioid treatment programs throughout the U.S. Therefore, the Public Health System Impact Statement (PHSIS) reporting requirements are not applicable. The Intergovernmental Review (E.O. 12372) requirement for applicants serving more than one State to contact the Single Point of Contact of each affiliated State would be an overly burdensome reporting requirement for the four eligible entities serving OTPs in multiple States, and is, therefore, not required for the ''Accreditation of OTPs'' program.

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21.
- State and Local Governments: OMB Circular A–87.
- Nonprofit Organizations: OMB Circular A–122.
- Appendix E Hospitals: 45 CFR Part 74.

In addition, SAMHSA Grant recipients must comply with the following funding restrictions:

- Grant funds must not be used for any purposes except accreditation/reaccreditation education, the accreditation/reaccreditation surveys or ''for cause'' surveys at the request of SAMHSA.
- Grant funds may not be used to subsidize the accreditation survey process for OTPs operated by the Department of Veterans Affairs or by other Federal agencies.
- No more than 5% of the grant award may be used for evaluation and data collection expenses.
- Grant funds may not be used to pay for the purchase or construction of any building or structure to house any part of the grant project.

6. Other Submission Requirements

6.1 Where to Send Applications

Send applications to the following address.

If using U.S. Postal Service Mail, use the following address: Office of Program Services, Review Branch, Substance Abuse and Mental Health Services Administration, Room 3–1046, 1 Choke Cherry Road, Rockville, MD 20857.

If using UPS/DHL/FedEx, use the following address: Office of Program Services, Review Branch, Substance Abuse and Mental Health Services Administration, Room 3–1046, 1 Choke Cherry Road, Rockville, MD 20850.

Be sure to include ''Accreditation of OTPs—TI 05–001'' in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How to Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored according to the *quality* of your response to the requirements listed below for developing the Project Narrative (Sections A–C). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the ''Program Narrative'' instructions found in the PHS 5161–1.
- You must use the three sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.
- Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA Web site at *http://www.samhsa.gov.* Click on ''Grant Opportunities.''
- The Supporting Documentation you provide in Sections D–G and Appendices 1–3 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.
- The number of points after each heading below is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

Section A: Project Description: (25 Points)

- List your project goals and objectives and describe how they relate to the purpose and goals of this RFA. In particular, describe your goals for the provision of accreditation/reaccreditation education and the

accreditation/reaccreditation surveys. For example, to whom will you provide the accreditation/reaccreditation education and what will be the intended outcomes of that education? How will reaccreditation training differ from accreditation training? How many accreditation/reaccreditation surveys do you anticipate conducting during the 3-year project period? What is your time frame for initiating and completing the anticipated accreditation/reaccreditation surveys?

- Discuss the functions and roles that your proposed project will require your organization to develop and your approach to the challenges and obstacles involved in these efforts.
- Discuss your experience to date doing accreditation/reaccreditation surveys and education including problems and their resolutions as well as lessons learned.
- Provide an estimate of the usual, average charges billed for an accreditation/reaccreditation survey of an OTP, and the incremental increase for accreditation as an OTP when part of a broader accreditation survey. Identify any cash and in-kind contributions that will be made to the project.

Section B: Proposed Approach (40 Points)

- Describe the processes, activities, methodologies, and approaches that will achieve project goals and objectives.
- Describe the OTP educational activities to be conducted to prepare OTPs for accreditation and reaccreditation.
- Describe how required activities and reporting requirements will be carried out.
- Describe examples of problems that may occur and strategies for overcoming them. SAMHSA is particularly interested in learning about your organization's strategies for educating and preparing for accreditation those OTPs which have severe quality problems or which are particularly resistant to adhering to accreditation standards.
- Describe how the accreditation body will use approaches that are culturally appropriate and competent in addressing age, culture, race/ethnicity, language, sexual orientation, gender, and disability issues.
- Discuss how you will comply with the GPRA and other data collection requirements (including a 30-day follow up with a minimum of 80% of all baseline participants followed up).

Section C: Staff, Management, and Relevant Experience (35 Points)

- Describe the project director's experience and qualifications in the fields of opioid treatment, continuous quality improvement, and accreditation.
- Describe the specific expertise of key personnel in medication-assisted treatment and in the development of accreditation standards.
- Describe the experience of key personnel in management, administration, accreditation technical assistance, meeting planning, and automated data processing, which make them qualified to carry out project tasks.
- Justify proposed time commitments of key personnel.
- Describe the feasibility of accomplishing the project in terms of (1) time frame, (2) availability of resources (*e.g.*, facilities and ability to schedule, carry out accreditation/reaccreditation site visits, and analyze their results), and (3) management plan.
- Discuss the capability and experience of the applicant organization with similar projects.
- Describe the project management plan, with a time line for tasks and staffing pattern for staff.
- Describe procedures for continuous quality improvement and evaluation of accreditation/reaccreditation activities.
- Discuss your organization's capability to obtain and maintain a sufficient number of staff and surveyors to complete the project.
- Provide evidence that your organization's facilities include adequate office space, meeting rooms, and equipment (such as personal computers, automated data processing capability, photocopying equipment, and FAX machines) to accomplish project goals.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

Decisions to fund a grant are based on:

- The strengths and weaknesses of the application as identified by peer reviewers and, when appropriate, approved by the appropriate National Advisory Council; and
- Availability of funds.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

2.1 General Requirements

■ You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site at *http://www.samhsa.gov/grants/2004/useful_info.asp*.

■ Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified or negotiated with the grantee prior to grant award. These may include, for example:

- ○ Actions required to be in compliance with human subjects requirements;
- ○ Requirements relating to additional data collection and reporting;
- ○ Requirements relating to participation in a cross-site evaluation; or
- ○ Requirements to address problems identified in review of the application.

- You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.
- In an effort to improve access to funding opportunities for applicants,

SAMHSA is participating in the U.S. Department of Health and Human Services ''Survey on Ensuring Equal Opportunity for Applicants.'' This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide quarterly, annual and final progress reports in electronic and hard copies. The final progress report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.

• Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, ''GPRA data'') from grantees. These requirements are specified in Section I–2.1 of this announcement.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

For questions concerning program issues, contact: Jacqueline Hendrickson, MSW, Division of Pharmacologic Therapies, SAMHSA/CSAT, 5600 Fishers Lane, Rockwall II, Suite 618, Rockville, MD 20857, (301) 443–1109, *jhendric@samhsa.gov*.

For questions on grants management issues, contact: Kimberly Pendleton, Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–6133, *kpendlet@samhsa.gov*.

Appendix A—Checklist for Formatting Requirements for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific grant announcement. Please check the entire grant announcement before preparing your application.

☐ Use the PHS 5161–1 application.

☐ Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

☐ Information provided must be sufficient for review.

☐ Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

☐ Paper must be white paper and 8.5 inches by 11.0 inches in size.

☐ To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

☐ The page limitation for Appendices stated in the funding announcement cannot be exceeded.

☐ To facilitate review of your application, follow these additional guidelines. The information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

☐ The 10 application components required for SAMHSA applications should be included. These are:

• Face Page (Standard Form 424, which is in PHS 5161–1)

• Abstract

• Table of Contents

• Budget Form (Standard Form 424A, which is in PHS 5161–1)

• Project Narrative and Supporting Documentation

• Appendices

• Assurances (Standard Form 424B, which is in PHS 5161–1)

• Certifications (a form within PHS 5161–1)

• Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)

• Checklist (a form in PHS 5161–1)

☐ Applications should comply with the following requirements:

• Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 in this funding announcement.

• Budgetary limitations as specified in Section I, II, and IV–5 of this funding announcement.

• Documentation of nonprofit status as required in the PHS 5161–1.

☐ Pages should be typed single-spaced with one column per page.

☐ Pages should not have printing on both sides.

☐ Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

☐ Send the original application and two copies to the mailing address in the funding

announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD-ROMs.

Dated: July 26, 2004.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–17354 Filed 7–29–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in September 2004.

A portion of the meeting will be open and will include a roll call, general announcements, Director's and Administrator's Reports, as well as presentations and discussions about Mental Health System Transformation.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed below as contact to make arrangements to comment or to request special accommodations for persons with disabilities.

The meeting also will include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with title 5 U.S.C. 552b(c) and (6) and 5 U.S.C. App. 2 section 10(d).

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained by accessing the SAMHSA Advisory Committee Web site (*http://www.samhsa.gov*) or by communicating with the contact whose name and telephone number are listed below. The transcript for the open session will also be available on the SAMHSA Advisory Committee Web site.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: September 1–2, 2004.

Place: Patuxent Room, Bethesda Hyatt Regency, 1 Bethesda Metro Center, Bethesda, Maryland 20814, 301–657–1234.

Type: Closed: September 1, 2004, 9 a.m.–12 p.m. *Open:* September 1, 2004, 1:30 p.m.–5 p.m., September 2, 2004, 9 a.m.–12 p.m.

Contact: Dale Kaufman, MPH, MA, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 17–C–02, Rockville, Maryland 20857, telephone: (301) 443–2660, and FAX (301) 443–1563, e-mail: *dkaufman@samhsa.gov*.

Dated: July 23, 2004.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–17334 Filed 7–29–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1527–DR]

Michigan; Amendment No. 2 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Michigan (FEMA–1527–DR), dated June 30, 2004, and related determinations.

DATES: *Effective Date:* July 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Michigan is hereby amended to include Individual Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 2004:

Eaton, Muskegon, Saginaw, and Washtenaw Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program–Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17348 Filed 7–29–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1515–DR]

North Dakota; Amendment No. 4 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–1515–DR), dated May 5, 2004, and related determinations.

DATES: *Effective Date:* July 23, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 5, 2004:

Eddy County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17347 Filed 7–29–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1531–DR]

South Dakota; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1531–DR), dated July 20, 2004, and related determinations.

DATES: *Effective Date:* July 20, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 20, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms and flooding on May 28, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin DeMello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Haakon, Jackson, Marshall, Mellette, Minnehaha, Todd, Tripp, and Turner Counties and the Rosebud Indian Reservation for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17349 Filed 7–29–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* July 30, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 22, 2004.

Mark R. Johnston,

Director.

[FR Doc. 04–17196 Filed 7–29–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Interagency Steering Committee on Multimedia Environmental Modeling

AGENCY: Geological Survey, Interior.

ACTION: Notice of open meeting.

SUMMARY: The annual public meeting of the Federal Interagency Steering Committee on Multimedia Environmental Modeling (ISCMEM) will convene to review progress by the ISCMEM working groups and to discuss initiatives for FY 2005.

Date of Meeting: August 24, 2004.

Place: U.S. Nuclear Regulatory Commission Headquarters Auditorium, 11545 Rockville Pike, Rockville, MD 20852.

Time: 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to: Dr. George H. Leavesley, ISCMEM Chair, U.S. Geological Survey, Box 25046, MS 412, Denver Federal Center, Denver, CO 80225, or phone 303–236–5026.

SUPPLEMENTARY INFORMATION: *Background:* On July 5, 2001, six Federal agencies entered into a Memorandum of Understanding (MOU)

on research and development of multimedia environmental modeling (for a copy of the MOU with addendums, and details of the activities please see *http://www.ISCMEM.Org*). In 2002–2004, three additional Federal Agencies joined the interagency cooperative project. The MOU establishes a framework for facilitating cooperation and coordination among the following agencies (the specific research organization within the agency is in parenthesis): U.S. Army Corps of Engineers (Engineer Research and Development Center): U.S. Department of Agriculture (Agricultural Research Service); U.S. Department of Agriculture (Natural Resources Conservation Service); U.S. Department of Energy (Office of Research and Development); U.S. Environmental Protection Agency; U.S. Geological Survey, U.S. Department of Homeland Security; U.S. National Oceanographic and Atmosphere Administration; and U.S. Nuclear Regulatory Commission (Office of Nuclear Regulatory Research). These agencies are cooperating and coordinating in research and development (R&D) of multimedia environmental models, software and related databases, including development, enhancements, applications and assessments of site-specific, generic, and process-oriented multimedia environmental models as they pertain to human and environmental health risk assessment. Specifically, the MOU supports collaboration and the exchange of technical information in support of multimedia environmental modeling focusing on environmental risk assessments, including develop/enhancements of models and mold frameworks or infrastructure and advancement of related technical activities, such as considering uncertainty and model application procedures.

Purpose of the Public Meeting: The annual public meeting provides an opportunity for the scientific community, other Federal and State agencies, and the public to be briefed on the progress of the MOU working groups and their initiatives for the upcoming year, and to discuss technological advancements in multimedia environmental modeling.

Proposed Agenda: The ISCMEM Chair will report on new participating Federal agencies. The four MOU working groups, Software System Design and Implementation, Uncertainty and Parameter Estimation, Modeling Reactive Transport, and Watershed/Water-Quality Modeling, will report on their progress during the year. A series of technical presentations will focus on: progress on the Joint Universal Parameter Identification and Evaluation of Reliability (JUPITER) project; the development of methodologies for reducing model complexity while maintaining validity of model results; the development of efficient subsurface-sampling designs for pollutant transport surveys; and results of the *Interagency Meeting on Conceptual Model Development for Subsurface Reactive Transport Modeling of Inorganic Contaminants, Radionuclides, and Nutrients*. Participation of similar coordinating groups and consortia outside the U.S., with this MOU, will also be discussed. A detailed agenda with presentation titles and speakers will be posted on the MOU public Web site: *http://www.ISCMEM.Org*.

Meeting Access: The U.S. Nuclear Regulatory Commission (NRC) Headquarters Auditorium is located in Two White Flint North Building at 11545 Rockville Pike, Rockville, Maryland. To access the NRC Auditorium, please use the Two White Flint North building entrance to proceed through security. The most convenient transportation to the meeting venue is via Metro. Please take Metro to the White Flint Metro stop on the Red Line. NRC is directly across the street from the White Flint Metro exit on Marinelli Road. Please inform the security personnel that you are attending the public meeting on multimedia environmental modeling in the NRC Auditorium.

George H. Leavesley,

Chair, Federal Interagency Steering Committee on Multimedia Environmental Modeling.

[FR Doc. 04–17350 Filed 7–29–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW150210]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the NARO North Tract described below in Campbell County, WY, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10 a.m., on Tuesday, August 31, 2004. Sealed bids must be submitted on or before 4 p.m., on Monday, August 30, 2004.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Robert Janssen, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Powder River Coal Company of Gillette, WY. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following-described lands located in southeastern Campbell County approximately 6 miles east of State Highway 59, 10 miles south of State Highway 450, and adjacent to the Piney Canyon and Antelope County Roads:

T. 42 N., R. 70 W., 6th PM, Wyoming
Sec. 28: Lots 5–16;
Sec. 29: Lots 5–16;
Sec. 30: Lots 9–20;
T. 42 N., R. 71 W., 6th PM, Wyoming
Sec. 25: Lots 5–15;
Sec. 26: Lots 7–10;
Sec. 35: Lots 1, 2, 7–10, 15, 16.
Containing 2,369.38 acres, more or less.

The tract is adjacent to Federal and State of Wyoming coal leases to the south held by the North Antelope Rochelle Mine. It is also adjacent to additional unleased Federal coal to the east, north, west, and southwest.

All of the acreage offered has been determined to be suitable for mining. Features such as the county roads and pipelines can be moved to permit coal recovery. Numerous oil and/or gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of this future income stream will determine whether a well is bought out and plugged prior to mining or re-established after mining is completed. The surface estate of the tract is owned by the North Antelope Rochelle Mine and the United States.

The tract contains surface mineable coal reserves in the Wyodak seam currently being recovered in the adjacent, existing mine. On the tract, the Wyodak seam is generally a single seam

averaging about 77 feet thick. A small area in the northeast corner of the LBA has a split off the bottom of the main seam. This split starts at about 17 feet thick but thins rapidly to the east. The interburden increases to about 15 feet thick at the eastern edge of the LBA. The overburden depths range from about 290 to 365 feet thick on the LBA.

The tract contains an estimated 324,627,000 tons of mineable coal. This estimate of mineable reserves includes the main Wyodak seam and split mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include the State of Wyoming coal although these reserves are expected to be recovered by the NARO mine. The total mineable stripping ratio (BCY/Ton) of the coal is about 3.9:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam and multiple seam mining.

The NARO North LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 9090 BTU/lb with about 0.25% sulfur and 2.4% sodium in the ash. These quality averages place the coal reserves at the top of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Monday, August 30, 2004, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW150210, are available for inspection at the BLM Wyoming State Office.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 04–17455 Filed 7–29–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–134–1610–DQ–006C]

Notice of Availability of a Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS) for the Colorado Canyons National Conservation Area (CCNCA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Proposed Colorado Canyons Resource Management Plan and Final Environmental Impact Statement (RMP/FEIS) is available to the public for a 30–day protest period. The Proposed Plan and associated FEIS were developed in accordance with the National Environmental Policy Act (NEPA) of 1969, and the Federal Land Policy and Management Act (FLPMA) of 1976.

DATES: BLM will accept written protests on the FEIS if postmarked within 30 calendar days from the date that a Notice of Availability is published in the **Federal Register** by the Environmental Protection Agency. Instructions for filing a protest are described in the Dear Reader letter in the PRMP/FEIS and are also included in the Supplementary Information section of this notice.

ADDRESSES: Written comments should be sent to: Jane Ross, 2815 H Road, Grand Junction, Colorado 81506. Comments also may be sent by e-mail to *Jane_Ross@co.blm.gov*. Written comments, including names and addresses of respondents, will be available for public review at the offices of the BLM Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado 81506, during normal working hours (7:30 a.m. to 4:30 p.m., except holidays).

The PRMP/FEIS and other associated documents or background information may be viewed and downloaded in PDF format at the project Web site at *http://www.co.blm.gov/cocanplan/*. Copies of the DRMP/EIS are available at the BLM Grand Junction Office at the address above; at the BLM Moab (UT) Field Office, 82 E. Dogwood, Moab, UT 84532. Copies are also available at the following Mesa County Public Library District locations during regular business hours:

Central Library, 530 Grand Avenue, Grand Junction, CO 81501;

Fruita Branch, 325 East Aspen Avenue, Fruita, CO 81521;

Palisade Branch, 711 Iowa Street, Palisade, CO 81526;

Clifton Branch, Peachtree Shopping Center, 3225 I–70 Business Loop A–1, Clifton, CO 81520;

Orchard Mesa Branch, 2736 Unaweep Avenue, Grand Junction, CO 81503.

The planning documents and direct supporting record for the analysis for the DRMP/EIS will be available for inspection at the BLM Grand Junction Field Office during normal working hours, 7:30 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Jane Ross (970) 244–3027, Planning and Environmental Coordinator (*jane_ross@co.blm.gov*), or Raul Morales at (970) 244–3066 (*raul_morales@co.blm.gov*), acting Colorado Canyons NCA Manager, Bureau of Land Management, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506.

SUPPLEMENTARY INFORMATION: The CCNCA was officially designated on October 24, 2000, when the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 was signed into public law by the President. The purpose of the Act is to conserve, protect, and enhance, for the benefit and enjoyment of both present and future generations, the nationally important values of the public lands making up the CCNCA, including the Black Ridge Canyons, Ruby Canyon, and Rabbit Valley. The CCNCA, located west of Grand Junction, includes 122,300 rugged acres of sandstone canyons, natural arches, spires, and alcoves carved into the Colorado Plateau along a 24–mile stretch of the Colorado River. Included in the CCNCA are 75,550 acres of wilderness designated as the Black Ridge Canyons Wilderness. At the western boundary of the CCNCA, 5,200 acres stretch into eastern Utah.

The Environmental Protection Agency published the Notice of Availability of the Colorado canyons National Conservation Area Resource Management Plan and Draft EIS in the **Federal Register** on October 17, 2003. The public comment period on the DEIS ended January 30, 2004. The agency preferred alternative, Alternative 3, is the selected alternative for the Proposed Plan and FEIS. The agency preferred

alternative is the Adaptive Management Alternative that emphasizes maintaining the current level of enjoyment of the area's recreational opportunities and unique characteristics while recognizing that increased future use will trigger the need for increased levels of management. Monitoring for land health and visitors' beneficial experience will determine when increased levels of management are required. Objectives for this alternative include preserving the character of the area; preserving and enhancing traditional recreation activities—hiking, camping, mountain biking, OHV use, horseback riding, hunting, and boating; and maintaining land health and improving priority areas of concern. The document contains a summary of the decisions and resulting impacts, an overview of the planning process and planning issues, the Proposed Plan, comment letters and responses received during public review of the Draft Plan, and responses to the substantive issues raised during the review.

The resource management planning process includes an opportunity for public, administrative review of proposed land use plan decisions during a 30–day protest period of the PRMP/FEIS. Any person who participated in the planning process for the PRMP/FEIS, and who has an interest which is or may be adversely affected, may protest approval of this PRMP/FEIS and the land use plan decisions contained within it (*see* 43 CFR 1610.5–2) during this 30–day period. Only those persons or organizations who participated in the planning process leading to this PRMP/FEIS may protest. A protest may raise only those issues submitted for the record during the planning process leading up to the publication of this PRMP/FEIS. These issues may have been raised by the protesting party or others. New issues may not be brought into the record at the protest stage. The 30–day period for filing a plan protest begins when the Environmental Protection Agency publishes in the **Federal Register** its Notice of Availability of the Final environmental impact statement containing the PRMP/FEIS. There is no provision for any extension of time. To be considered ''timely,'' your protest, along with all attachments, must be postmarked no later than the last day of the protest period. A letter of protest must be filed in accordance with the planning regulations, 43 CFR 1610.5–2(a)(1). Protests must be in writing. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and emails to *Brenda_Hudgens-Williams@blm.gov*. If sent by regular mail, send to: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington DC 20035. For overnight (*i.e.*, Federal Express) mailing, send protests to: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036. In order to be considered complete, your protest must contain, at a minimum, the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts of the PRMP/FEIS being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, *etc.*, included in the document.

4. A copy of all documents addressing the issue or issues that you submitted during the planning process or a reference to the date the issue or issues were discussed by you for the record.

5. A concise statement explaining why the Colorado BLM State Director's proposed decision is believed to be incorrect. This is a critical part of your protest. Take care to document all relevant facts.

As much as possible, reference or cite the planning documents, environmental analysis documents, or available planning records (*i.e.*, meeting minutes or summaries, correspondence, *etc.*). A protest that merely expresses disagreement with the Colorado BLM State Director's proposed decision, without any data, will not provide us with the benefit of your information and insight. In this case, the Director's review will be based on the existing analysis and supporting data. Upon resolution of any protests, an Approved Plan and Record of Decision will be issued. The approved Plan/Record of Decision will be mailed to all individuals who participated in this planning process and all other interested public upon their request.

Dated: April 6, 2004.

Raul Morales,

Manager, Colorado Canyons National Conservation Area.

[FR Doc. 04–17254 Filed 7–29–04; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–EU]

Notice of Availability of the Draft Environmental Impact Statement for the Las Vegas Valley Disposal Area as expanded by the Clark County Conservation of Public Land and Natural Resources Act of 2002, Public Law 107–282, November 6, 2002

AGENCY: Bureau of Land Management, Interior.

COOPERATING AGENCIES: U.S. Air Force, Nellis Air Force Base; U.S. Fish and Wildlife Service, Desert National Wildlife Refuge Complex; Clark County Regional Flood Control District; Clark County Comprehensive Planning; City of Henderson; City of Las Vegas; City of North Las Vegas.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 and the Federal Land Policy and Management Act (FLPMA) of 1976, the Bureau of Land Management (BLM) has prepared a Draft EIS with the specific purpose to authorize transfer of title or uses of public land in the Las Vegas Valley. The project area consists of all remaining lands identified for disposal within the boundary established by the Southern Nevada Public Lands Management Act (SNPLMA) (Public Law 105–263), as amended by the Clark County Conservation of Public Land and Natural Resources Act of 2002 (Clark County Act) (Public Law 107–282). This EIS will ensure the intent of Congress, as portrayed in the SNPLMA and the Clark County Act, is met by providing land for organized local community development. This does not preclude other authorized uses of public lands such as applications for Rights-of-Way, Leases and Recreation and Public Purpose Leases located in Clark County, Nevada, Hydrographic Basin 212. The EIS fulfills the needs and obligations set forth by NEPA, FLPMA, and BLM management policies as defined in the Resource Management Plan (RMP) of 1998.

DATES: Written comments on the Draft EIS will be accepted for 60 days following the date of publication of the

Notice of Availability by the Environmental Protection Agency in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: You may submit comments by any of the following methods:

- Web site: *http://www.nv.blm.gov/lvdiseis*.
- E-mail: *jsteinme@nv.blm.gov*.
- Fax: (702) 515–5155.
- Mail: Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Copies of the Draft EIS are available in the BLM Las Vegas Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jeff Steinmetz, BLM Las Vegas Field Office, Telephone (702) 515–5097; e-mail *jsteinme@nv.blm.gov*.

SUPPLEMENTARY INFORMATION: Shortly after approval of SNPLMA, the BLM received an increase in requests for public land disposal. The Clark County Act significantly increased the amount of land available for disposal by adding approximately 22,000 acres to the Las Vegas Valley Disposal Area by amending the boundary defined and approved in SNPLMA. (The rapid disposal rate and additional lands created the need to augment the impact analysis conducted for the Las Vegas RMP, signed October 5, 1998). The current Draft EIS considers and analyzes three alternatives that meet the requirements of SNPLMA and the Clark County Act. The alternatives include complete disposal, a disposal implementation option (conservation transfer) that addresses sensitive environmental resources, and a no action alternative as required by NEPA. The no action alternative to land disposal is a continuation of realty management as specified in the RMP, including disposal of BLM–managed lands until the cumulative development (including private lands) throughout the Las Vegas Valley reaches the projected total of 80,000 acres. Land disposal authorized by SNPLMA and the Clark County Act that would result in subsequent development of more acreage than the amount evaluated in the RMP are not included in the no action alternative. Under the complete disposal alternative all BLM land within the disposal boundary would be available for disposal, unless the action would violate another law, such as the Endangered Species Act. Analysis of this alternative includes evaluation of indirect and cumulative impacts of post-disposal development. Under the disposal implementation option or conservation transfer alternative, the BLM would consider transfer options that restrict subsequent use of individual properties to protect sensitive environmental resources. These options could include mitigation and/or protection of the resource before or after the property is transferred. Major resource issues addressed in the Draft EIS include air quality, surface water hydrology and water quality, water supply and demand, protected and sensitive plant and wildlife species, archaeological and historic sites, paleontological resources, socioeconomics, recreation opportunities, and visual characteristics. A predictive model for air quality impacts prepared by Argonne National Laboratory (Argonne) was used as the basis for the reasonably foreseeable land development scenario and as the best available data for analyzing cumulative impacts of past, present, and projected development. In addition, BLM is currently working with Argonne and Clark County Department of Air Quality Management to run another model that includes potential mitigation for Ozone precursors. This model run will be ready before the Final EIS is completed.

Mark T. Morse,

Field Manager, Las Vegas.

[FR Doc. 04–17255 Filed 7–29–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–04–1310–DB]

Notice of Extension of the Public Comment Period for the Northeast National Petroleum Reserve-Alaska, Draft Environmental Impact Statement/ Integrated Activity Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Extension of the Public Comment Period for the Northeast National Petroleum Reserve-Alaska, Draft Environmental Impact Statement/Integrated Activity Plan Amendment.

SUMMARY: The Bureau of Land Management (BLM) announces an extension of the public comment period on the Northeast National Petroleum Reserve-Alaska, Draft Environmental Impact Statement/Integrated Activity Plan Amendment. The original notice issued June 18, 2004 provided for a comment period to end on August 2, 2004. BLM is extending the comment period until August 23, 2004.

DATES: Written comments on issues relating to the future land use, planning, and management of the Northeast corner of National Petroleum Reserve-Alaska must be submitted or postmarked no later than August 23, 2004.

ADDRESSES: Comments on the document should be addressed to: Susan Childs, Project Manager, Northeast National Petroleum Reserve-Alaska Plan Amendment, Bureau of Land Management, Alaska State Office (930), 222 West 7th Avenue, Anchorage, Alaska 99513–7599. Comments can also be submitted by accessing the Web site developed for this project at *http://nenpra.ensr.com*.

FOR FURTHER INFORMATION CONTACT: Susan Childs, BLM Alaska State Office, 907–271–1985 or by mail at 222 West 7th Avenue, Anchorage, Alaska 99513–7599.

SUPPLEMENTARY INFORMATION: The original Notice of Availability issued on June 18, 2004 provided for comments on the Draft EIS to be received through August 2, 2004. The North Slope Borough, the local government for the plan area, has requested an extension in the comment period. BLM has decided to act in accordance to the Borough's request, therefore, comments on the Draft EIS Amendment and on issues relevant to the review of the proposed plan amendment will now be accepted through August 23, 2004.

Dated: June 29, 2004.

Henri Bisson,

State Director.

[FR Doc. 04–17092 Filed 7–29–04; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–01–130–1060]

Notice of Public Hearings Addressing the Use of Helicopters and Motorized Vehicles During the Capture of Wild Horses

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public hearings.

SUMMARY: A public hearing addressing the use of motorized vehicles and helicopters during the capture of wild horses in the Little Book Cliffs Wild Horse Range, Grand Junction Field Office, Grand Junction, Colorado.

DATES: The public hearing has been scheduled for September 9, 2004 at the Grand Junction Field Office; 2815 H Road; Grand Junction, Colorado. Time of the meeting will be 7 p.m. Information for the meeting will be announced through public notices, local newspaper announcements and mailings.

ADDRESSES: Grand Junction Field Office: 2815 H Road, Grand Junction, Colorado 81506.

SUPPLEMENTARY INFORMATION: The Little Book Cliffs wild horse gather is scheduled for completion during October 2004 if weather allows. Otherwise the gather will occur between August 1 and October 1, 2005: For additional information regarding the public hearing please contact Jim Dollerschell, Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81506; telephone (970) 244–3016 or e-mail *Jim_Dollerschell@co.blm.gov.*

Dated: July 23, 2004.

Raul Morales,

Associate Field Office Manager.

[FR Doc. 04–17282 Filed 7–29–04; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Programmatic Environmental Assessment of Geological and Geophysical Exploration for Mineral Resources on the Gulf of Mexico Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of an Environmental Assessment.

SUMMARY: The Minerals Management Service (MMS) has prepared an environmental assessment (EA) to evaluate the potential environmental impacts of geological and geophysical (G&G) activities in the Gulf of Mexico. The activities analyzed in the EA include seismic surveys, deep-tow side-scan surveys, electromagnetic surveys, geological and geochemical sampling, and remote-sensing surveys. The impact-producing factors considered in the EA include seismic survey noise, vessel and aircraft noise, seafloor disturbance, and space-use conflicts with seismic arrays.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Dr. Richard Defenbaugh, (504) 736–2759.

SUPPLEMENTARY INFORMATION: The MMS currently requires operators engaged in activities on the OCS, including G&G activities, to comply with a number of lease stipulations, Notices to Lessees, and other mitigation measures designed to reduce or eliminate impacts to sensitive environmental resources from impact-producing factors such as vessel or aircraft traffic, anchoring, and trash and debris. As part of the impact analyses completed in the G&G EA, current protective and mitigation measures were evaluated. Additional feasible mitigation measures were also considered, as were potential restrictions on concurrent operations within close proximity to one another, as viable alternatives to further reduce the potential for impacts to marine mammals. Based on established significance criteria, the results of the impact analyses are that G&G activities are not expected to result in significant adverse impacts to any of the potentially affected resources. Potentially adverse but not significant impacts were identified for marine mammals (except the manatee) and commercial and recreational fishing; negligible to potentially adverse but not significant impacts were identified for sea turtles, fish, and benthic communities; and negligible impacts were identified for coastal and marine birds and the manatee. The EA has resulted in a Finding of No Significant Impact. Based on this EA, we have concluded that the G&G activities evaluated in the EA will not significantly affect the quality of the human environment. Preparation of an environmental impact statement is not required. The EA will be included as part of the information package used to petition the National Oceanic and Atmospheric Administration for small ''takes'' incidental to seismic surveys in the Gulf of Mexico, under the enabling regulations of the Marine Mammal Protection Act.

EA Availability: To obtain a copy of the EA, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the EA on the MMS Web site at *http://www.gomr.mms.gov.*

Dated: June 23, 2004.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 04–17401 Filed 7–29–04; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1084–1087 (Preliminary)]

Purified Carboxymethylcellulose From Finland, Mexico, Netherlands, and Sweden

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Finland, Mexico, Netherlands, and Sweden of purified carboxymethylcellulose, provided for in subheading 3912.31.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of these investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of these investigations need not enter a separate appearance for the final phase of these investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 9, 2004, a petition was filed with the Commission and Commerce by Aqualon Co., a division of Hercules, Inc., Wilmington, DE, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of purified carboxymethylcellulose from Finland, Mexico, Netherlands, and Sweden. Accordingly, effective June 9, 2004, the Commission instituted antidumping duty investigations Nos. 731–TA–1084–1087 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 17, 2004 (69 FR 33938). The conference was held in Washington, DC, on June 30, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 26, 2004. The views of the Commission will be contained in USITC Publication 3713 (July 2004), entitled *Purified Carboxymethylcellulose from Finland, Mexico, Netherlands, and Sweden: Investigations Nos. 731–TA–1084–1087 (Preliminary).*

Issued: July 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17410 Filed 7–29–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine
ME030001 (Jun. 13, 2003)
ME030002 (Jun. 13, 2003)
ME030005 (Jun. 13, 2003)
ME030006 (Jun. 13, 2003)
ME030007 (Jun. 13, 2003)
ME030008 (Jun. 13, 2003)
ME030009 (Jun. 13, 2003)
ME030010 (Jun. 13, 2003)

New York
NY030002 (Jun. 13, 2003)
NY030003 (Jun. 13, 2003)
NY030004 (Jun. 13, 2003)
NY030007 (Jun. 13, 2003)
NY030009 (Jun. 13, 2003)
NY030010 (Jun. 13, 2003)
NY030011 (Jun. 13, 2003)
NY030013 (Jun. 13, 2003)
NY030014 (Jun. 13, 2003)
NY030016 (Jun. 13, 2003)
NY030017 (Jun. 13, 2003)
NY030018 (Jun. 13, 2003)
NY030026 (Jun. 13, 2003)
NY030031 (Jun. 13, 2003)
NY030032 (Jun. 13, 2003)
NY030033 (Jun. 13, 2003)
NY030034 (Jun. 13, 2003)
NY030036 (Jun. 13, 2003)
NY030037 (Jun. 13, 2003)
NY030039 (Jun. 13, 2003)
NY030040 (Jun. 13, 2003)
NY030041 (Jun. 13, 2003)
NY030042 (Jun. 13, 2003)
NY030043 (Jun. 13, 2003)
NY030045 (Jun. 13, 2003)
NY030046 (Jun. 13, 2003)
NY030049 (Jun. 13, 2003)
NY030050 (Jun. 13, 2003)
NY030060 (Jun. 13, 2003)
NY030071 (Jun. 13, 2003)
NY030074 (Jun. 13, 2003)
NY030076 (Jun. 13, 2003)

Volume II

Maryland
MD030002 (Jun. 13, 2003)
MD030015 (Jun. 13, 2003)
MD030031 (Jun. 13, 2003)
MD030043 (Jun. 13, 2003)
MD030055 (Jun. 13, 2003)
Pennsylvania
PA030001 (Jun. 13, 2003)
PA030002 (Jun. 13, 2003)
PA030003 (Jun. 13, 2003)
PA030004 (Jun. 13, 2003)
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PA030038 (Jun. 13, 2003)
PA030040 (Jun. 13, 2003)
PA030042 (Jun. 13, 2003)
PA030059 (Jun. 13, 2003)
PA030061 (Jun. 13, 2003)
PA030065 (Jun. 13, 2003)
West Virginia
WV030001 (Jun. 13, 2003)
WV030002 (Jun. 13, 2003)
WV030003 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)
WV030011 (Jun. 13, 2003)

Volume III

Florida
FL030045 (Jun. 13, 2003)
Georgia
GA030083 (Jun. 13, 2003)
North Carolina
NC030050 (Jun. 13, 2003)
South Carolina
SC030036 (Jun. 13, 2003)

Volume IV

Illinois
IL030012 (Jun. 13, 2003)
Wisconsin
WI030002 (Jun. 13, 2003)
WI030003 (Jun. 13, 2003)
WI030004 (Jun. 13, 2003)
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WI030032 (Jun. 13, 2003)
WI030033 (Jun. 13, 2003)
WI030039 (Jun. 13, 2003)
WI030040 (Jun. 13, 2003)
WI030046 (Jun. 13, 2003)
WI030047 (Jun. 13, 2003)

Volume V

Nebraska
NE030001 (Jun. 13, 2003)
NE030003 (Jun. 13, 2003)
NE030011 (Jun. 13, 2003)
NE030019 (Jun. 13, 2003)

Volume VI

North Dakota
ND030003 (Jun. 13, 2003)
ND030007 (Jun. 13, 2003)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 22nd day of July 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–17045 Filed 7–29–04; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–095]

NASA Advisory Council, Biological and Physical Research Advisory Committee Audio Teleconference

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of audio teleconference.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Friday, August 13, 2004, from 12 noon until 2 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 2X40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Louis Ostrach, Code UF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0870.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. The agenda for the meeting is as follows:

—Performance Measures

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Dr. Louis Ostrach via email at *louis.h.ostrach@nasa.gov* or by telephone at (202) 358–0870. Persons with disabilities who require assistance should indicate this. It is imperative that the teleconference be held on this date to accommodate the scheduling priorities of the key participants.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–17338 Filed 7–29–04; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3103–ML; ASLBP No. 04–826–01–ML]

Atomic Safety and Licensing Board; In the Matter of Louisiana Energy Services, L.P. (National Enrichment Facility); Notice of Hearing (Application to Possess and Use Nuclear Material To Enrich Natural Uranium by the Gas Centrifuge Process)

July 26, 2004.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Paul B. Abramson, Dr. Charles N. Kelber.

This proceeding concerns the December 12, 2003 application of Louisiana Energy Services, L.P., (LES) for authorization to possess and use source, byproduct, and special nuclear material in order to enrich natural uranium to a maximum of five percent uranium-235 (U235) by the gas centrifuge process. LES proposes to do this at a facility—denominated the National Enrichment Facility (NEF)—to be constructed near Eunice, New Mexico. In a January 30, 2004, issuance, the Commission provided notice of the receipt and availability of the LES application and of the opportunity for a hearing on the application. (*Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI–04–3, 59 NRC 10 (2004).) That notice was published in the **Federal Register** on February 6, 2004. (69 FR 5873 (Feb. 6, 2004).) Responding to the February 2004 notice, two intervention petitions were filed by governmental entities associated with the State of New Mexico—the New Mexico Environment Department (NMED) and the Attorney General of New Mexico (AGNM)—while a third was submitted by two public interest organizations, the Nuclear Resource and Information Service and Public Citizen (NIRS/PC). Each of their hearing requests/petitions to intervene sought in accordance with 10 CFR 2.309 to interpose various contentions challenging the application. In response to those hearing requests, the petitions were referred by the Commission to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. On April 15, 2004, this Licensing Board was appointed to preside over this proceeding. (69 FR 22100 (Apr. 23, 2004).) The Board consists of Dr. Paul B. Abramson, Dr. Charles N. Kelber, and G. Paul Bollwerk, III, who serves as Chairman of the Board.

On June 15, 2004, the Board conducted an initial prehearing conference in Hobbs, New Mexico, during which it heard oral presentations regarding the admissibility of thirty-two contentions proffered by the petitioners. Thereafter, in a July 19, 2004 issuance the Board noted that all the petitioners have established the requisite standing to intervene in this proceeding and ruled that each has submitted at least one admissible contention concerning the LES application so that each can be admitted as a party to this proceeding. (*Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP–04–14, 60 NRC____ (July 19, 2004).)

In light of the foregoing, please take notice that a hearing will be conducted in this contested proceeding. This hearing will be governed by the formal hearing procedures set forth in 10 CFR part 2, subparts C and G (10 CFR 2.300–.390, 2.700–.713). Further, with respect to matters of law and fact regarding whether the LES application satisfies the standards set forth in the Commission's January 30, 2004 order and the applicable standards in 10 CFR 30.33, 40.32, and 70.23 that are not covered by admitted contentions, without conducting a de novo evaluation of the application the Board will determine (1) whether the application and the record of the proceeding contain sufficient information and whether the NRC staff's review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards, regarding the standards set forth above; and (2) whether the review conducted by the staff pursuant to 10 CFR part 51 is adequate. Also, in accordance with Subpart A of 10 CFR part 51, the Board in its initial decision will (1) determine whether the requirements of sections 102(2)(A), (C), and (E) of the National Environmental Policy Act of 1969 and 10 CFR part 51, subpart A, have been complied with in the proceeding; (2) independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and (3) determine whether a license should be issued, denied, or conditioned to protect the environment.

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.331, may hold additional prehearing conferences pursuant to 10 CFR 2.329, and may conduct evidentiary hearings in accordance with 10 CFR 2.327–.328, 2.711. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov.*

Additionally, as provided in 10 CFR 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement. Limited appearance statements, which are placed in the docket for the hearing, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary, Rulemakings and Adjudications Staff,

U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–1101 (verification (301) 415–1966).

E-mail to: *hearingdocket@nrc.gov.*

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–5599 (verification (301) 415–7550).

E-mail to: *gpb@nrc.gov.*

At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the proposed NEF. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, *http://www.nrc.gov.*

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

It is so ordered.

(Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) petitioners NMED, the AGNM, and NIRS/PC; and (3) the staff.)

Rockville, Maryland, July 26, 2004.

For the Atomic Safety and Licensing Board.

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 04–17344 Filed 7–29–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–12998]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License; Amendment for Philadelphia Health & Education Corporation's Facility at the Eastern Pennsylvania Psychiatric Institute in Philadelphia, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Randolph C. Ragland, Jr., Nuclear Materials Safety Branch 1, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5083, fax (610) 337–5269; or by email: *rcr1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Philadelphia Health & Education Corporation for Materials License No. 37–07438–15, to authorize release of its facility located at 3200 Henry Avenue, Philadelphia, PA for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's 3200 Henry Avenue, Philadelphia, PA facility for unrestricted use. The Eastern Pennsylvania Psychiatric Institute was authorized by NRC as a location of use from 1982 to use radioactive materials for research and development purposes at the site. On May 5, 2004, Philadelphia Health & Education Corporation requested that NRC release the facility for unrestricted use. Philadelphia Health & Education Corporation has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20. The NRC staff has prepared an EA in support of the proposed license amendment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the proposed license amendment to release the facility for unrestricted use. The NRC staff has evaluated Philadelphia Health & Education Corporation's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the applications for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: ML042050031, ML041340651, ML042010301, and ML041950465. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by email to *pdr@nrc.gov.* These documents may also be examined, and/or copied for a fee, at the NRC PDR, located at One White Flint North, 11555 Rockville Pike (First Floor), Rockville, MD 20852. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays; and at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

Dated in King of Prussia, Pennsylvania this 23rd day of July, 2004.

For the Nuclear Regulatory Commission.

Penny Lanzisera,

Acting Chief, Nuclear Materials Safety Branch 1, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–17345 Filed 7–29–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting

DATE: Week of July 26, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of July 26, 2004

Thursday, July 29, 2004

9:25 a.m. Affirmation Session (Public Meeting)

a: Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); NRC Staff's Petition for Interlocutory Review of the Licensing Board's June 25, 2004 Oral Order (Finding the Intervenor's Witness Qualified as an Expert in the Area of Nuclear Security)

9:30 a.m. Discussion of Security Issues (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: Dave Gamberoni, (301) 415–1651.

* * * * *

Additional Information:

By a vote of 3–0 on July 26, the commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held July 29, and on less than one week's notice to the public.

By a vote of 3–0 on July 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); NRC Staff's Petition for Interlocutory Review of the Licensing Board's June 25, 2004 Oral Order (Finding the Intervenor's Witness Qualified as an Expert in the Area of Nuclear Security)'' be held July 29, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: July 27, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–17479 Filed 7–28–04; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Facility Tours

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission visit.

SUMMARY: Postal Rate Commissioners and staff members will tour a bulk mail facility in Seattle, Washington, and bypass mail facilities in Anchorage and Fairbanks, Alaska, in mid-August. They also will observe the preparation of mail for delivery from Anchorage, Bethel, and Fairbanks, Alaska. The purpose is to familiarize attendees with postal operations in the Northwest and with the challenges entailed in delivering mail to remote areas in Alaska.

DATES: August 13 through August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General counsel, 202–789–6818.

Dated: July 27, 2004.

Steven W. Williams,

Secretary.

[FR Doc. 04–17400 Filed 7–29–04; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 2, 2004: Closed Meetings will be held on Tuesday, August 3, 2004, at 2 p.m. and Thursday, August 5, 2004, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, August 3, 2004, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Thursday, August 5, 2004, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 27, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–17458 Filed 7–27–04; 4:25 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50081; File No. SR–Amex–2004–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Apply the Current Member Firm Guarantee for Equity Options to Index Options

July 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 30, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02(d) to Amex Rule 950(d) to apply the current member firm guarantee for equity options to index options traded on the Exchange. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Exchange's current participation or member firm guarantee to index options. As further discussed below, the member firm guarantee provides that a floor broker representing a member firm seeking to facilitate its own customer's order is entitled to a participation guarantee of 20% if the order is traded at the best bid or best offer (the ''BBO'') provided by the trading crowd, or 40% if the order is traded at a price that improves the trading crowd's market, *i.e.*, at a price between the BBO. Amex is proposing to amend Commentary .02(d) to Amex Rule 950(d), which sets forth the current member firm guarantee for equity options, to extend its application to index options traded on the Exchange.

In April 2003,[3] the Exchange received permanent approval of its pilot program relating to the member firm guarantee initially approved by the Commission on June 2, 2000.[4] Commentary .02(d) to Amex Rule 950(d) governs the applicability of member firm guarantees in facilitation cross transactions in equity options and sets forth the member firm guarantee percentages.[5]

The rule provides a floor broker, under certain conditions, the ability to cross a specified percentage of the customer order on behalf of a member firm before the specialist and/or registered options traders in the crowd can participate in the transaction, *i.e.*, the member firm guarantee. The provision generally applies to orders of 400 contracts or more. The Exchange, however, is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that the size is not for fewer than 50 contracts.

The amount of the guaranteed participation percentage depends upon a comparison of the original market quoted by the trading crowd in response to a request from the floor broker and the price at which the order is traded. If the order is traded at the BBO provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the order is traded at a price that improves the market provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 40% of the order. In addition, the facilitating member firm may participate in the executed contracts only after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled.

Currently, the member firm guarantee applies only to orders in equity options. The instant proposal would extend the member firm guarantee to index options. Thus, for index option orders, floor brokers similarly would be guaranteed a participation of 20% if the order is traded at the BBO, or 40% if the order improves the market. All other rules concerning the member firm guarantee that currently apply to equity options would also apply to index options. The Exchange believes that the proposed expansion of the member firm guarantee to index options will provide greater incentive for order flow providers to bring order flow to the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47643 (April 7, 2003), 68 FR 17970 (April 14, 2003).

[4] *See* Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000).

[5] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2004–51 and should be submitted on or before August 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17388 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50079; File No. SR–CBOE–2004–44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Permanent Approval of the $5 Quote Width Pilot Program

July 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In January 2004, the CBOE implemented a pilot program (''Pilot Program''), which expires on July 29, 2004, that permits quote spread parameters of up to $5, regardless of the price of the bid, for up to 200 options classes traded on the CBOE's Hybrid Trading System (''Hybrid'').[3] The CBOE subsequently expanded the Pilot Program to include all options classes traded on Hybrid[4] and limited the applicability of the $5 quote spreads permitted under the Pilot Program to quotations that are submitted electronically to Hybrid.[5] The CBOE requests permanent approval of the Pilot Program.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 49153 (January 29, 2004), 69 FR 5620 (February 5, 2004) (notice of filing and immediate effectiveness of File No. SR–CBOE–2003–50) (''Pilot Notice''); and 49919 (June 25, 2004), 69 FR 40424 (notice of filing and immediate effectiveness of File No. SR–CBOE–2004–36) (extending the Pilot Program through July 29, 2004).

[4] *See* Securities Exchange Act Release No. 49318 (February 25, 2004), 69 FR 10085 (March 3, 2004) (notice of filing and immediate effectiveness of File No. SR–CBOE–2004–10) (''February Notice'').

[5] *See* Securities Exchange Act Release No. 49791 (June 2, 2004), 69 FR 32389 (June 9, 2004) (order approving File No. SR–CBOE–2004–20) (''June Order'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program became effective in January 2004 and designated 200 options classes that could be quoted with a difference not to exceed $5 between the bid and offer regardless of the price of the bid.[6] In February 2004, the CBOE expanded the number of options classes in the Pilot Program to include all options classes trading on Hybrid.[7] The CBOE subsequently limited the applicability of the $5 quote spreads permitted under the Pilot Program to quotations that are submitted electronically to Hybrid.[8]

The Pilot Program expires on July 29, 2004. As part of the Pilot Program, the CBOE prepared and submitted to the Commission a report assessing the operation of the Pilot Program and, in particular, the quality of the quotations for the options included in the Pilot Program. Specifically, the CBOE's Pilot Program report compared and analyzed the Average Quote Width Analysis (''AQWA'') scores for each stock included in the Pilot Program prior to the implementation of the Pilot Program and during the operation of the Pilot Program.

According to the CBOE, the Pilot Program report indicates that the implementation of $5 quote widths had no deleterious effects on average quote widths during the pilot period. To the contrary, the CBOE maintains that the implementation of the Pilot Program had little, if any, effect on average AQWA scores.

The CBOE believes that the Pilot Program has been successful and has helped to contribute to the maintenance of efficient markets. The CBOE notes

[6] *See* Pilot Notice, *supra* note 3.

[7] *See* February Notice, *supra* note 4.

[8] *See* June Order, *supra* note 5.

that, as it expected, the statistics in the Pilot Program report show that market makers in any particular options class did not widen their quotes to the maximum allowable $5 width at all times. Instead, the CBOE believes that the Pilot Program provided market makers with a tool to manage their risk when they believed that wider quotes were necessary. The CBOE notes that in an environment with high degrees of both intra- and inter-market competition, a market maker that consistently quotes $5 wide at all times likely will never trade. Nevertheless, the CBOE notes that there are instances when a market maker may need to widen his or her quotes and, in this regard, the ability to quote $5 wide gives some measure of protection to the market maker.[9] The CBOE believes that this is where the Pilot Program has been most beneficial.

The CBOE notes that on July 12, 2004, the Commission approved a CBOE proposal to allow the introduction of competing e-Designated Primary Market Makers (''e-DPMs'') on the CBOE.[10] According to the CBOE, e-DPMs will effectively function as remote competing specialists in the most active Hybrid classes. The CBOE believes that adding more well-capitalized quoters may greatly increase the already robust level of intramarket competition, thereby contributing to even greater depth of markets and more competitively-priced quotes. For these reasons, the CBOE asks the Commission to permanently approve the Pilot Program.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[11] Specifically, the CBOE believes the proposed rule change is consistent with the section 6(b)(5)[12] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–44 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE–2004–44 and should be submitted on or before August 20, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act[14] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Although the Commission believes generally that maximum quotation spread parameters in the options market could provide an important safeguard to ensure that market maker quotes in options are not unnecessarily wide,[15] the Commission believes that the CBOE's Hybrid system provides sufficiently strong incentives for market makers submitting quotations electronically to Hybrid to disseminate competitive quotations without maximum quotation spread parameters.[16] In this regard, the Commission notes that in Hybrid each market maker quotes independently, customers and broker-dealers may enter orders in the limit order book at prices better than those posted by market makers, and incoming orders are allocated based on the price and size of orders and quotes resting in the book.[17] Under the CBOE's matching algorithm, the larger the size of a market maker's quotation at the best price, the greater

[9] CBOE Rule 8.7(d) imposes a minimum quote size obligation of 10 contracts on market makers. The CBOE notes that market makers may not quote lower than this number even if the underlying market has disseminated erroneous quotes or reported bad trades. According to the CBOE, in the absence of the ability to quote one-up, quoting $5 wide is one of the few remaining methods by which a market maker may limit his or her risk.

[10] *See* Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43028 (July 19, 2004) (order approving File No. SR–CBOE–2004–24).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See e.g.*, Securities Exchange Act Release No. 47532 (March 19, 2003), 68 FR 55685 (March 26, 2003) (order approving File No. SR–ISE–2001–15) (establishing a six-month pilot program permitting $5 quotation spreads in up to 50 options classes on the International Securities Exchange, Inc.).

[16] As noted above, the $5 quotation spreads permitted under the Pilot Program apply only to quotations that are submitted electronically to Hybrid. See June Order, supra note 5.

[17] *See* Pilot Notice, *supra* note 3.

the size of the allocation he or she receives.[18] The Commission believes that these attributes and rules of the CBOE provide strong market incentives for market makers submitting quotations electronically to Hybrid to maintain narrow and competitive quotation spreads.

The Commission believes that the Pilot Program report submitted by the CBOE indicates that the spreads in market maker quotations submitted electronically to Hybrid did not widen significantly during the operation of the Pilot Program. Accordingly, the Commission believes that permanent approval of the Pilot Program is consistent with the Act.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As noted above, the CBOE's Pilot Program report indicated that the spreads in market maker quotations submitted electronically to Hybrid did not widen significantly during the operation of the Pilot Program. In addition, the CBOE's Pilot Program is substantially similar to a pilot program implemented by the International Securities Exchange, Inc. (''ISE''), that the Commission approved permanently.[19] The Commission received no comments on either the ISE's pilot program or the CBOE's Pilot Program. Accordingly, the Commission believes that good cause exists, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[20] to grant accelerated approval to the proposal.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CBOE–2004–44) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17389 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

[18] *See* Pilot Notice, *supra* note 3.

[19] *See* Securities Exchange Act Release No. 50015 (July 14, 2004), 69 FR 43872 (July 22, 2004) (order approving File No. SR–ISE–2003–22).

[20] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50055; File No. SR–CBOE–2004–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Require Members To Use and Maintain a Back-Up Autoquote System in Hybrid Classes

July 21, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to require members to use and maintain a back-up quoting system in Hybrid classes and to incorporate violations of this requirement in the Exchange's Minor Rule Violation Plan (''Plan''). The text of the proposed rule change is available at the principal office of the Exchange and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to adopt new CBOE Rule 8.85(a)(xii) which require a Designated Primary Market-Maker (''DPM''), utilizing a proprietary autoquote system in a class trading on CBOE's Hybrid platform, to have available for immediate use an alternative autoquote system that is independent of the DPM's primary autoquote system. This requirement would apply at all times during market hours. The Exchange believes that the back-up system would need to be independent in order to ensure that any event that may cause a failure to the primary autoquote system does not corrupt the back-up system. The Exchange also proposes to modify subparagraph (g)(10) of CBOE Rule 17.50—*Imposition of Fines for Minor Rule Violations*—to incorporate in its Plan violations of proposed CBOE Rule 8.85(a)(xii). The Exchange believes that this proposed rule change is substantially similar to a requirement currently in place for non-Hybrid classes[3] (except, in that case, CBOE requires use of CBOE's autoquote system as a back-up; that system is not available in the Hybrid environment, so CBOE proposes to require a second proprietary back-up instead).

The Exchange believes that the failure of a proprietary autoquote system could result in CBOE's inability to open for an entire group of listed option classes for a brief or sometimes lengthy time period. Thus, CBOE has strongly encouraged, and now seeks to require, that members have a back-up system ready in Hybrid classes should the primary autoquote system fail. CBOE believes that failure to comply with the proposed requirement should be subject to sanction under the Exchange's Plan on a trading-station-by-trading-station basis.

The Exchange believes that determining a violation would be objective in nature and very suitable for inclusion in the Plan. However, because a DPM could be in violation for one minute or four hours, the Exchange believes that violations can vary greatly in terms of the impact on CBOE's marketplace. Therefore, the Exchange believes it is appropriate to allow for summary fines under the Plan that could range from $100 to $2,500 for first-time violations and from $100 to $5,000 (the minimum and maximum allowable under the Plan) for a limited number of subsequent violations. For egregious violations, including those that severely impact the trading of option classes on the Exchange for an extended period of time, the Modified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46808 (November 12, 2002), 67 FR 69776 (November 19, 2002) (SR–CBOE–2002–30).

Trading System Appointments Committee (the committee charged with DPM supervision) would have the discretion to refer the matter to the CBOE Business Conduct Committee instead of handling such violations under the Plan. Further, in no event would more than three violations by the same DPM in any 12 month period be handled under the Plan. CBOE floor officials would be responsible for issuing summary fines under the proposed rule. Lastly, because different trading stations operated by the same DPM organization can operate and maintain autoquote systems differently, the Exchange believes it is appropriate for the summary fines to be handled on a trading-station-by-trading-station basis.

2. Statutory Basis

The Exchange believes that, because the proposed rule change would refine and enhance the Exchange's Plan to make it more efficient and effective, the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(5)[5] and 6(b)(7)[6] in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–12 and should be submitted on or before August 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17396 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(7).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50058; File No. SR–CBOE–2004–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Transaction Fees for DPMs and e-DPMs

July 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 2004, the Chicago Board Options Exchange, Incorporated. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make a change to its Fee Schedule to maintain an equitable allocation of reasonable fees in the context of the CBOE's new market structure initiatives.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In order to enhance competition and better service the needs of the investing community, the CBOE is continuing its efforts to provide an enhanced Hybrid market model of trading that combines the superior depth and liquidity of floor-based Market-Makers and Designated Primary Market-Makers (''DPMs'') with the speed and convenience of electronic trading.

To that end, the CBOE has established an enhanced market model for equity options seeking to combine advanced technology with the broadest possible base of liquidity providers.[3] This new system is collectively referred to throughout this filing as ''Hybrid 2.0.'' As further explained in this filing, a new category of market participants would function in Hybrid 2.0 as follows:

Electronic DPMs (''e-DPMs'') would operate as competing specialists and be allowed to stream quotes into their appointed option classes without having to be physically present in the trading crowd. e-DPMs would be required to continuously stream quotes in a specified percentage of series of a broad number of option classes. They would have special eligibility requirements and would have to meet market performance standards.

In order to maintain an equitable allocation of Exchange costs and fees among the new category of market participants, as well as existing CBOE DPMs and Market-Makers, particularly in light of the additional costs the Exchange is incurring in providing new categories of electronic market access through Hybrid 2.0, the Exchange proposes several changes to the Exchange Fee Schedule.

Lower Fees and Alternative Fixed Fee Option for DPMs

The Exchange has already reduced the transaction fees of current DPMs in Hybrid 2.0 option classes by cutting the current DPM transaction fees to a total of $.12 per contract.[4] The Exchange now proposes to offer current DPMs the opportunity to elect a fixed rate schedule (described in more detail below) instead of the current assessment of transaction fees on a per-contract basis. The alternative fixed rate schedule is also designed to reduce the DPMs' current fee obligations.

As the Exchange also noted in SR-CBOE–2004–38, there are several reasons why these reductions in DPM fees are both reasonable and equitable in this context. DPMs, in addition to being required to fulfill all the responsibilities of Market-Makers under CBOE Rule 8.7, are also responsible for fulfilling numerous additional responsibilities specified in CBOE Rule 8.85 that regular Market-Makers are not required to fulfill, most notably to provide continuous market quotations for each class and series allocated to the DPM.[5] Notwithstanding the substantial additional responsibilities of DPMs, CBOE DPMs have until recently paid the same transaction fees as those of CBOE Market-Makers. The Exchange respectfully submits that such equal fees in the past have been a product of Exchange policy, rather than a requirement of the Exchange Act or other applicable law. Due to the additional responsibilities borne by DPMs, the CBOE believes that it is reasonable and equitable under the Act for the CBOE to assess lower transaction fees to DPMs than to Market-Makers.

Again, as noted in SR–CBOE–2004–38, the Exchange believes it is particularly appropriate to re-examine DPM fees at the present time because the recent approval of some of the Exchange's Hybrid 2.0 market structure initiatives, as established in the approval of SR–CBOE–2004–24, is effectively reducing the compensation levels of DPMs. Specifically, DPMs have been compensated in part for their additional responsibilities through the participation entitlement formulas established pursuant to Exchange Rule 8.87. Under the Hybrid 2.0 market structure initiatives approved in SR–CBOE–2004–24, however, DPMs would now be required to share their previous participation entitlements with the new e-DPMs. The CBOE believed that it was therefore equitable to reduce DPM transaction fees from $.24 per contract to $.12 per contract to offset their reduced revenues from their reduced participation entitlement through lower transaction fees, as established in SR–CBOE–2004–38, and believes that it is also equitable to reduce DPM transaction fees by providing the alternative fixed fee arrangement proposed here.

Alternative Fixed Annual Fee

As part of its effort to reduce DPM transaction fees, the Exchange now proposes to offer DPMs, as well as e-DPMs, the alternative, as of October 1, 2004, to choose a fixed annual fee of $1.75 million instead of the current assessment of transaction fees on a per-contract basis for its DPM and e-DPM transactions only[6] in all equity option classes.

Linkage fees and credits for CBOE DPMs electing the fixed annual fee would be treated as follows. Section 21 of the CBOE Fee Schedule (as established in SR–CBOE–2004–08) provides that the CBOE would credit back to DPMs all *CBOE* transaction fees that CBOE DPMs incur from outgoing Principal Acting as Agent (P/A) orders. DPMs electing to pay the fixed fee would neither be charged CBOE transaction fees for CBOE transactions related to such outgoing P/A orders, nor would they receive the above-mentioned corresponding credit back for such fees. However, pursuant to the second phase of linkage fee relief specified in SR-CBOE–2004–08, all CBOE DPMs, including those electing the fixed annual fee, who pay transaction fees at other exchanges to execute P/A orders there, would receive a credit of up to 50% of CBOE DPM transaction charges for each such order (or up to $.06 per contract, with the total of such credits not to exceed the total amount of inbound linkage transaction fees received by the CBOE) to help offset the transaction fees of other exchanges that CBOE DPMs incur in filling P/A orders at those exchanges.

The Exchange would review the level of the fixed annual fee periodically as part of its annual budget process. As with all fee changes, any proposed changes to the fixed annual fee would be filed with the Commission.

e-DPM Fees

The Exchange proposes to set the transaction fee levels for e-DPMs at $.22 per contract (the Market-Maker rate) through the end of July, and $.25 per contract thereafter, in order to minimize the difficulties for the CBOE and its clearing members to process this fee change intra-month. The CBOE believes that the e-DPM transaction fee level is appropriately set higher than those of on-floor DPMs because the Exchange would incur additional systems and other logistical costs both initially and on an ongoing basis in order to establish and maintain the infrastructure needed

[3] *See* Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43028 (July 19, 2004 (approving File No. SR–CBOE–2004–24).

[4] *See* File No. SR–CBOE–2004–38.

[5] *See* CBOE Rule 8.85 ''DPM Obligations,'' which sets forth numerous DPM obligations.

[6] The fixed fee does not cover any floor brokerage fees.

to enable market participation as an e-DPM.

As noted earlier, e-DPMs would have the option to elect the same fixed annual fee described above for regular DPMs, in recognition of the responsibilities that e-DPMs would shoulder in assisting the regular DPMs in their quoting responsibilities.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–48 and should be submitted on or before August 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17397 Filed 7–29–04; 8:45 am]

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[7] The fixed fee would be one payment of $1.75 million, even if the member organization holds appointments as both one or more regular DPMs and one or more e-DPMs.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50072; File No. SR–CHX–2004–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

July 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on July 1, 2004, the Chicago Stock Exchange, Incorporated (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend its membership dues and fees schedule (the ''Fee Schedule''), to include a specific equipment charge for a new size of computer monitor. The text of the proposed rule change is available upon request from the CHX or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and noted that it did not solicit or receive comments on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the current Fee Schedule, the Exchange charges its members for specific types of equipment provided by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Exchange. These charges include fees for personal computers, monitors and printers. Fees vary based on the specific type of equipment provided.[3]

In this proposal, the Exchange seeks to add a new charge, of $32.00 per month, for 19-inch flat-panel monitors.[4] This new fee is designed to take effect immediately. A separate filing, SR–CHX–2004–19, seeks to make this fee retroactive to a date earlier in the year when these monitors were first deployed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–18 and should be submitted on or before August 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17394 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

[3] For example, a laptop computer has a charge of $150.00 per month, while a Pentium 450 PC has a charge of $70.00 per month.

[4] The Exchange currently charges a fee of $32.00 per month for 18-inch flat panel monitors.

[5] 15 U.S.C. 78(f)(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50060; File No. SR–ISE–2004–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. To Extend Until June 5, 2005, a Pilot Program Under Which It Lists Options on Selected Stocks Trading Below $20 at One-Point Intervals

July 22, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 16, 2004, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to extend until June 5, 2005, a pilot program under which it lists options on selected stocks trading below $20 at $1 strike price intervals (''$1 Strike Pilot Program''). The text of the proposed rule change is available at the Office of the Secretary, the ISE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 16, 2003, the Commission approved the ISE's $1 Strike Pilot Program, which allows the ISE to list

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

series with $1 strike price intervals on equity options classes that overlie up to five individual stocks, provided that the strike prices are $20 or less, but not less than $3, and subject to the terms of the $1 Strike Pilot Program.[3] Although the ISE may select only up to five individual stocks to be included in the $1 Strike Pilot Program, the ISE also is permitted to list options on other individual stocks at $1 strike price intervals if other options exchanges list those series pursuant to their respective rules. The ISE selected the following five options classes to participate in the $1 Strike Pilot Program: AMR Corp. [AMR], Calpine Corp. [CPN], EMC Corp. [EMC], El Paso Corp. [EP], and Sun Microsystems Inc. [SUNW]. The $1 Strike Pilot Program expires on August 5, 2004.[4]

The Pilot Program Approval Order and the Pilot Extension Notice required the ISE to provide the Commission with certain information and data covering the entire time the $1 Strike Pilot Program was in effect in the event that the ISE proposed to, among other things, extend the $1 Strike Pilot Program. Accordingly, the ISE has prepared and submitted a report (''Pilot Program Report'') that provides data and written analysis relating to the five options classes the ISE selected to participate in the $1 Strike Pilot Program.

According to the ISE, the Pilot Program Report data shows, generally, that there is meaningful trading volume and open interest in the $1 strikes, as compared to the non-$1 strikes in the same class. For example, the ISE notes that an analysis of the trading in AMR options for the November 2003 series compared with the April 2004 series indicates that there is a growing interest by investors in the $1 Strike Pilot Program. In AMR, for the November 2003 series, the collective open interest and trading volume among all $1 strikes ($6, $9, $11, $14, $16 and $17), was 60,026 contracts and 8,872 contracts, respectively, compared to the collective open interest and trading volume among all non-$1 strikes ($2.50, $5, $7.50, $10, $12.50 and $15), of 193,625 contracts and 31,468 contracts, respectively. For the April 2004 series, the collective open interest and trading volume among all $1 strikes ($6, $7, $8, $9, $11, $12, $13, $14, $16, $17, $18, and $19) was 44,422 contracts and 47,327 contracts, respectively, compared to the collective open interest and trading volume among all non-$1 strikes ($5, $10, $15, $20, $22.50 and $25) of 49,276 contracts and 9,900 contracts, respectively.

The ISE believes that a similar analysis of the trading in CPN options for the October 2003 series compared with the March 2004 series further lends support for extending the $1 Strike Pilot Program. For example, in CPN, for the October 2003 series, the collective open interest and trading volume among all $1 strikes ($4, $6, $9 and $11) was 23,004 contracts and 3,407 contracts, respectively, compared to the collective open interest and trading volume among all non-$1 strikes ($2.50, $5, $7.50, $10 and $12.50) of 84,537 contracts and 13,738 contracts, respectively. For the March 2004 series, the collective open interest and trading volume among all $1 strikes ($3, $4, $6, $7, $8 and $9) was 55,884 contracts and 16,329 contracts, respectively, compared to the collective open interest and trading volume among all non-$1 strikes ($5 and $10) of 16,441 contracts and 13,848 contracts, respectively. According to the ISE, an analysis of the trading in the options for EMC, EP and SUNW revealed similar findings.

While the trading volume and open interest in the $1 strikes is not always as high as it is in the non-$1 strikes, the ISE believes that this can at least partially be attributed to the industry convention of $2.50 strikes in low priced stocks, and that, over time, this convention will break down and result in a more even distribution in volume and open interest in $1 strikes. The ISE believes that this information and data demonstrate that the five classes it selected to participate were appropriate for the $1 Strike Pilot Program. The ISE notes that the underlying stocks are highly capitalized with low stock prices and generally are in different industries, yet the $1 strike data appears relatively consistent across all five stocks. Moreover, the ISE did not experience any capacity issues related to the $1 Strike Pilot Program, nor does it believe there has been any negative impact on the capacity of the Options Price Reporting Authority (''OPRA'') as a result of the $1 Strike Pilot Program. According to the ISE, the $1 Strike Pilot Program was, in general, well received by the ISE's members, and the ISE did not receive any complaints from its members or investors regarding the listing of $1 strikes.

The ISE believes that this information and data shows that there is sufficient investor interest and demand to justify extending the $1 Strike Pilot Program until June 5, 2005. The ISE continues to believe that the $1 Strike Pilot Program has provided investors with greater trading opportunities and flexibility. The ISE further believes the $1 Strike Pilot Program has provided investors with the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. The ISE has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals.

2. Statutory Basis

The ISE believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, the ISE believes the proposed rule change is consistent with requirements under section 6(b)(5) of the Act[6] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The ISE believes that extension of the $1 Strike Pilot Program until June 5, 2005, will result in a continuing benefit to investors by allowing them to more closely tailor their investment decisions, and will allow the ISE to further study investor interest in $1 strike price intervals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from its members or other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The ISE has filed the proposed rule change pursuant to section 19(b)(3)(A)

[3] *See* Securities Exchange Act Release No. 48033 (June 16, 2003), 68 FR 37036 (June 20, 2003) (order approving File No. SR–ISE–2003–17) (''Pilot Program Approval Order''). See also Securities Exchange Act Release No. 49827 (June 8, 2004), 69 FR 33966 (June 17, 2004) (notice of filing and immediate effectiveness of File No. SR–ISE–2004–21) (extending the $1 Strike Pilot Program until August 5, 2004) (''Pilot Extension Notice'').

[4] *See* Pilot Extension Notice, *supra* note 3.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), the ISE provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay to prevent a lapse in the operation of the $1 Strike Pilot Program, which expires on August 5, 2004.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the $1 Strike Pilot Program to continue without interruption through June 5, 2005.[9] For this reason, the Commission designates that the proposal become operative immediately.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2004–26 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2004–26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2004–26 and should be submitted on or before August 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] If the ISE proposes to (1) extend the $1 Strike Pilot Program beyond June 5, 2005; (2) expand the number of options eligible for inclusion in the $1 Strike Pilot Program; or (3) seek permanent approval of the $1 Strike Pilot Program, it must submit a pilot program report to the Commission along with the filing of such proposal. The pilot program report must cover the entire time the $1 Strike Pilot Program was in effect and must include: (1) data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the $1 Strike Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the $1 Strike Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the ISE selected for the $1 Strike Pilot Program; (4) an assessment of the impact of the $1 Strike Pilot Program on the capacity of the ISE's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the $1 Strike Pilot Program and how the ISE addressed them; (6) any complaints that the ISE received during the operation of the $1 Strike Pilot Program and how the ISE addressed them; and (7) any additional information that would help to assess the operation of the $1 Strike Pilot Program. The Commission expects the ISE to submit a proposed rule change at least 60 days before the expiration of the $1 Strike Pilot Program in the event the ISE wishes to extend, expand, or seek permanent approval of the $1 Strike Pilot Program. The Commission notes that the submission of a satisfactory pilot program report along with a proposed rule change to extend, expand, or permanently approve the $1 Strike Pilot Program is a condition precedent to the future operation of the ISE's $1 Strike Pilot Program.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50074; File No. SR–NASD–2004–076]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, by the National Association of Securities Dealers, Inc. To Rename Certain of Nasdaq's Systems and To Make Other Technical Corrections

July 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] *See* letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 2, 2004 (''Amendment No. 1''). In Amendment No. 1, Nasdaq made various technical and clarifying amendments to the proposed rule text.

[6] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated July 21, 2004 (''Amendment No. 2''). In Amendment No. 2, Nasdaq made additional clarifying amendments to the proposed rule text.

have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3) thereunder,[4] as one concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission.

Nasdaq filed Amendment No. 1 to the proposed rule change on July 2, 2004.[5] Nasdaq filed Amendment No. 2 to the proposed rule change on July 23, 2004.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to rename certain of its systems and to make other technical corrections to certain of its rules. Nasdaq will implement the proposed rule change immediately. The text of the proposed rule change, as amended, is available at the Office of the Secretary, Nasdaq, at the Commission, and on the Commission's Web site, *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is generally discontinuing the use of the terms ''SuperMontage,'' ''Nasdaq National Market Execution System,'' ''NNMS,'' and ''ACT'' in its rules and replacing them in many instances with the term ''Nasdaq Market Center.'' The proposed rule change also makes several technical corrections to punctuation and paragraph designations and other conforming changes. These changes include, in NASD Rule 4701, a consolidation of former paragraphs (r), (d), (x) and (ee) into a single paragraph (r) with four subsections setting forth the four functionalities that the newly-named Nasdaq Market Center comprises: (1) An order execution service as already described in paragraph (r); (2) a trade reporting service formerly designated by the term ''Automated Confirmation Transaction'' Service or ''ACT'' and described in paragraph (d) and other rules; (3) for Nasdaq-listed securities, a quotation montage formerly designated by the term ''Nasdaq Quotation Montage'' and described in paragraph (x); and (4) for Nasdaq-listed securities, an order display service formerly designated by the term ''Nasdaq Order Display Facility'' and described in paragraph (ee).[7] In tandem with these changes, Nasdaq is also revising the terms by which its rules refer to certain participants in the former NNMS. For example, the former term ''NNMS Market Maker'' will be replaced by ''Nasdaq Market Maker.'' The former term ''NNMS ECN'' will be replaced by ''Nasdaq ECN.'' Nasdaq did not change certain proper names, including the names of preexisting agreements and equipment; rather, it will make corrections to the Rules as appropriate once the agreements and equipment are renamed.

In addition, Nasdaq is making technical corrections to NASD Rules 5210 and 5220. On March 2, 2004, the Commission approved Nasdaq's proposal to transition the trading of exchange-listed securities onto the SuperMontage trading platform from the Computer Assisted Execution System. The text of the SuperMontage rules approved as part of that proposal, as published in Exhibit A to Securities Exchange Act Release No. 49349 (March 2, 2004), 69 FR 10775 (March 8, 2004) (''Exhibit A''), contained minor technical errors. Exhibit A did not accurately reflect the text of NASD Rules 5210 and 5220 that had previously been approved by the Commission and were in effect.

Specifically, Exhibit A added a definition of the term ''CAES'' as new NASD Rule 5210(i) when NASD Rule 5210(i) already was in effect. Prior to the filing of SR–NASD–2003–149, NASD Rule 5210(i) set forth the definition of the term ''Third Participating Market Center Trade-Through.'' Therefore, Nasdaq is re-establishing the definition of the term ''Third Participating Market Center Trade-Through'' as NASD Rule 5210(i) and re-lettering the definition of CAES from NASD Rule 5210(i) to NASD Rule 5210(j).

Similarly, NASD Rule 5220(c) is added as a new provision, re-lettering then-existing paragraphs (c) through (g) as (d) through (h). Exhibit A inadvertently failed to identify and re-letter two additional paragraphs—paragraphs (h) and (i)—that the Commission had already approved in connection with SR–NASD–1999–075.[8] Therefore, Nasdaq is re-establishing the text of those provisions as NASD Rule 5220(i) and (j).

According to Nasdaq, nothing in the proposal to re-name Nasdaq's systems or to make other technical corrections alters the current operation of those systems or the rights and obligations of those using them. As such, the proposed rule change is solely administrative, technical, conforming and non-substantive in nature.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with section 15A of the Act,[9] in general, and with section 15A(b)(6) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Clarifying the rules helps market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section

[7] The description of the proposed rule change has been supplemented pursuant to a telephone conversation between Thomas Moran, Office of General Counsel, Nasdaq and Ira Brandriss, Assistant Director, Division, Commission, on July 13, 2004. As further discussed below, Nasdaq represents that none of the proposed changes alters the operation of the systems described or the rights and obligations of those using them.

[8] *See* Exchange Act Release No. 42536 (March 16, 2000), 69 FR 15401 (March 22, 2000).

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(3)[12] thereunder as one concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–076 on the subject line.

Paper comments:

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–NASD–2004–076. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–76 and should be submitted on or before August 20, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17390 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 C.F.R. 240.19b–4(f)(3).

[13] For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on July 23, 2004, the date Nasdaq submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50084; File No. SR–NASD–2004–103]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc., To Modify the Methodology for Applying Nasdaq's Pricing Schedule to Affiliated Members

July 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 21, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify its fee schedule by allowing the aggregation of activity of affiliated members, provided that the members have complete identity of common ownership. Nasdaq plans to implement the proposed rule change on August 1, 2004.

The text of the proposed rule change appears below.[6] Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

7020. [Reserved] *Aggregation of Activity of Affiliated Members*

(a) For purposes of applying any provision of Rules 7010(c), (d), (f), (g), (i), or (u) that reflects a charge assessed, or credit provided, by Nasdaq, a member may request that Nasdaq aggregate its activity with the activity of its affiliates. A member requesting aggregation of affiliate activity shall be required to certify to Nasdaq the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform Nasdaq immediately of any event that causes an entity to cease to be an affiliate. In addition, Nasdaq reserves the right to request information to verify the affiliate status of an entity.

(b) For purposes of applying any provision of Rules 7010(c), (d), (f), (g), (i), or (u) that reflects a charge assessed, or credit provided, by Nasdaq, references to an entity (including references to a ''member,'' a ''participant,'' or a ''Nasdaq Quoting Market Participant'') shall be deemed to include the entity and its affiliates that have been approved for aggregation.

(c) For purposes of this Rule 7020, the terms set forth below shall have the following meanings:

(1) An ''affiliate'' of a member shall mean any wholly owned subsidiary, parent, or sister of the member that is also a member.

(2) A ''wholly owned subsidiary'' shall mean a subsidiary of a member, 100% of whose voting stock or comparable ownership interest is owned by the member, either directly or indirectly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), dated July 19, 2004, and accompanying Form 19b–4 (''Amendment No. 1''). Amendment No. 1 replaced the original filing in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on July 21, 2004, the date Nasdaq filed Amendment No. 1. *See* Rule 19b–4(f)(2), 17 CFR 240.19b–4(f)(2).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at *www.nasd.com.*

through other wholly owned subsidiaries.

(3) A ''parent'' shall mean an entity that directly or indirectly owns 100% of the voting stock or comparable ownership interest of a member.

(4) A ''sister'' shall mean an entity, 100% of whose voting stock or comparable ownership interest is owned by a parent that also owns 100% of the voting stock or comparable ownership interest of a member.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's schedule of fees and credits, as reflected in the Rule 7000 Series of the NASD Manual, contains several provisions in which a member using Nasdaq services pays a fee, or receives a credit, that varies based upon its volume of usage. For example, when members use the order execution services of the Nasdaq Market Center, the fees that they pay to access liquidity, and the credits that they receive for providing liquidity, vary based upon the average daily shares of liquidity provided during a month: higher levels of liquidity provision result in lower fees and higher credits.[7] Other examples of volume-based pricing in the current Nasdaq fee schedule include pricing for transactions in exchange-listed stocks traded through the Nasdaq Market Center,[8] Nasdaq Workstation II display charges,[9] and fees for trade reporting.[10] In several prior pricing filings, Nasdaq has stated that although it would aggregate activity associated with multiple market participant identifiers (''MPIDs'') used by a member, Nasdaq would not aggregate one corporate entity's activity with activity associated with MPIDs assigned to subsidiaries or other affiliates with a different Central Registration Depository (''CRD'') number.[11] However, a particular member may choose to allocate activity across a group of wholly owned subsidiaries or other affiliates, rather than across multiple MPIDs of the same entity. Nasdaq understands that certain of its competitors allow aggregation of affiliate activity when applying their fee schedules.[12] Accordingly, Nasdaq has decided to revise its present policy by adopting a rule to allow aggregation of activity of affiliated members, provided that the members have a complete identity of common ownership. Thus, a member could request that its activity be aggregated with, for example, the activity of a direct wholly owned subsidiary, or an indirect subsidiary that was wholly owned by a direct wholly owned subsidiary.

Any diminution in the level of ownership below 100% of the voting stock or other comparable ownership interest would prevent the member from aggregating its activity with related members, even if a control relationship between the entities still existed. Thus, for example, if one member (''Member A'') owned 90% of the voting stock of a subsidiary member (''Member B''), which in turn owned 100% of the voting stock of another subsidiary member (''Member C''), Members B and C would be eligible for aggregation of their activity with one another, but Member A would not be permitted to aggregate its activity with either Member B or Member C, even though it exercised a control relationship with respect to them. Nasdaq believes that a bright line, set at the 100% level, is necessary to ensure that aggregation can occur without the need for a subjective analysis of the degree of control exercised by one entity over another.

Aggregation of activity could also be requested by a subsidiary with respect to parent corporations and/or sister corporations. Thus, for example, if Member A was wholly owned by Member B, which also owned 100% of Member C, Member A could request that its activity be aggregated with activity of both Members B and C. Finally, it should be noted that not all corporations in an ownership structure would be required to be members for the activity of the members to be aggregated, provided a wholly owned relationship existed among the members in the structure. Thus, for example, if a non-member holding company owned 100% of the stock of two members, the activity of the two members could be aggregated.

A member seeking to aggregate activity with that of other members would be required to send an application to Nasdaq informing Nasdaq as to the names and relationships of the entities for which aggregation is requested. In the application, the member would also certify that each entity for which aggregation is requested is, in fact, an affiliate within the meaning of Rule 7020. The member would be required to inform Nasdaq immediately if any entity ceased to be an affiliate.[13] Finally, Nasdaq reserves the right to require members requesting aggregation to provide information to verify the affiliate status of entities (although Nasdaq would not generally require such background information unless it had reason to question a firm's certification).

In applying Nasdaq's schedule of credits and fees, references to an entity (including references to a ''member,'' a ''participant,'' or a ''Nasdaq Quoting Market Participant'') shall be deemed to include the entity and its affiliates that have been approved for aggregation. Thus, for example, under the fee schedule for order executions of Nasdaq-listed securities through the Nasdaq Market Center, if two members that are affiliates provide an average daily volume of 15 million and 6 million shares of liquidity, respectively, during a month, each member would be entitled to receive a credit of $0.0025 per share of liquidity provided, rather than the $0.002 per share that each would currently receive. The activity of affiliated members would also be aggregated when applying Nasdaq's revenue sharing programs.[14] Finally, under NASD Rule 7010(i)(1), a member would not be charged for order executions when its order accesses its own Quote/Order or the Quote/Order of an affiliate.

Volume-based discounts that apply after certain thresholds are passed during the course of a month will be allocated to affiliates based on aggregate usage on an ongoing basis. For example, under NASD Rule 7010(i), there is a $10,000 per month cap on the $0.001

[7] *See* NASD Rule 7010(i).

[8] *See* NASD Rule 7010(d).

[9] *See* NASD Rule 7010(f)(1)(A).

[10] *See* NASD Rule 7010(g).

[11] *See, e.g.*, Securities Exchange Act Release No. 48972 (December 22, 2003), 68 FR 75301 (December 30, 2003) (notice of filing and immediate effectiveness of File No. SR–NASD–2003–185); and Securities Exchange Act Release No. 47661 (April 10, 2003), 68 FR 19045 (April 17, 2003) (notice of filing and immediate effectiveness of File No. SR-NASD–2003–51).

[12] *See, e.g., http://www.inetats.com/prodserv/bd/fee/fee.asp.*

[13] Nasdaq states that a false certification, or a failure to provide a timely notice that an entity has ceased to be an affiliate, would be deemed a violation of Nasdaq's rules and would be referred to NASD for investigation.

[14] *See* NASD Rules 7010(c) and (u).

per share charge for accessing liquidity from ECNs. Each of two affiliates would pay $0.001 per share until the $10,000 cap had been reached by the affiliates in the aggregate; thereafter, each affiliate would pay no fee for the remainder of the month. Volume-based discounts that apply to marginal usage of a service that is provided on a monthly, rather than a daily, basis (*e.g.*, the discount on the monthly fee for Nasdaq Workstation logons in excess of 150 logons) will be allocated to affiliates on a pro rata basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[15] in general, and with section 15A(b)(5) of the Act,[16] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes the proposed rule change will allow members to receive the benefits of volume-based discounts in Nasdaq's fee schedule when they choose to allocate their activity across a group of wholly owned subsidiaries or other affiliates, rather than across multiple MPIDs of the same member. Accordingly, Nasdaq believes the change will result in a wider availability of the discounts provided by the fee schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [17] and subparagraph (f)(2) of Rule 19b–4 thereunder,[18] because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR-NASD–2004–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASD–2004–103 and should be submitted on or before August 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17391 Filed 7–29–04; 8:45 am]

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[15] 15 U.S.C. 78o–3.

[16] 15 U.S.C. 78o–3(b)(5).

[17] 15 U.S.C. 78s(b)(3)(a)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on July 21, 2004, the date Nasdaq filed Amendment No. 1.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50065; File No. SR–NASD–2004–108]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Treatment of Commodity Pool Trail Commissions

July 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2004, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b-4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing a *Notice to Members* 04–50, discussing the treatment of commodity pool trail commissions under NASD Rule 2810 (Direct Participation Programs) (''Rule 2810'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

No changes to the text of NASD rules are required by this proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Direct Participation Programs Rule governs public offerings of direct participation programs (DPPs), including establishing limits on the level of underwriting compensation. Historically, in reviewing the level of underwriting compensation in commodity pool DPPs, NASD staff has excluded certain trail commissions. In particular, NASD staff excluded trail commissions paid to an associated person of a member if: (1) The member was registered with the Commodity Futures Trading Commission as a Futures Commission Merchant; (2) the associated person receiving the trail commissions had passed the National Commodity Futures Examination (Series 3) or the Futures Managed Funds Examination (Series 31); and (3) the associated person receiving the trail commissions provided ongoing investor relations services to the investors. *Notice to Members* 04–50 serves to advise members that effective immediately, NASD staff will consider all trail commissions paid in connection with commodity pool DPPs in calculating whether the level of underwriting compensation meets the requirements of Rule 2810.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is in the public interest and will benefit investors in commodity pool DPPs by limiting the compensation that can be paid to members for selling commodity pool DPPs, and servicing the accounts that hold such investments, to the same amounts that apply to all other DPP investments.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD *Notice to Members* 04–07 (February 2004) (the ''*Notice*''). Twenty-six comment letters addressing the issue of commodity pool DPP trail commissions were received in response to the *Notice*. Of the twenty-six comment letters received, two were in favor of the proposed rule change, twenty-three were opposed, and one expressed no opinion. Most of the commenters that opposed the proposed rule change noted generally the differences between commodity pools and other DPPs, and the services generally provided to persons investing in commodity pool DPPs. Many commenters also cited the benefits to investors of diversification by investing in commodities in general and in commodity pool DPPs in particular, but warned that if the level of underwriting compensation was capped, then they may no longer be in a position to recommend commodity pool DPPs to investors. However, six of the commenters that opposed the proposed rule change acknowledged that establishing compensation limits for selling commodity pool DPPs may be appropriate, but urged limits higher than those currently in place for other DPPs.

As discussed in *Notice to Members* 04–50, based upon NASD staff's review and analysis, including review of the comments received, NASD staff does not believe the reasons underlying the exclusion of certain trail commissions of commodity pool DPPs continue to apply today. NASD staff has seen no evidence that today's commodity pool DPP investors receive a significantly higher level of service than investors in other DPPs, including real estate, oil and gas, and equipment leasing partnerships. Moreover, commenters failed to adequately explain the differences in service provided by persons who have passed the Series 3 or Series 31 (and thus met the exclusion) and those who have not (and thus remained subject to the compensation limits of the DPP Rule). Finally, NASD staff believes that notwithstanding a limit on the level of underwriting compensation, firms and registered representatives will continue to offer and recommend commodity pool DPPs where there are benefits to investors in terms of diversification and where such products meet investors' financial status and investment objectives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD under Section 19(b)(3)(A)(i) of the Act[6] and Rule 19b–4(f)(1) thereunder,[7] which renders the proposal effective upon receipt of this filing by the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–108 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-NASD–2004–108. This file number should be included on the

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the file number SR–NASD–2004–108 and should be submitted by August 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17398 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50085; File No. SR–NSCC–2003–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Permitting Elimination of All Hard Copies of Important Notices

July 26, 2004.

I. Introduction

On March 14, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2003–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on January 23, 2004.[2] One comment letter was received.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

NSCC currently distributes notices to its members in a hard copy form using U.S. mail for members outside of the New York area, the Direct Drop Boxes for each member with a New York presence, and using fax when necessary. The proposed rule change modifies NSCC's Rule 45 to allow NSCC to post notices on its website and to have these postings satisfy NSCC's notification obligations. The rule change would require members to access that website throughout the day. The proposed rule change also modifies NSCC's Rule 45 to allow NSCC to serve notices on interested persons as defined in Rule 37 by emailing the notices to an interested person's email address.

NSCC believes that the proposed rule change would facilitate the timely dissemination of information necessary for participation in NSCC and therefore is consistent with the requirements of the Act and the rules and regulations thereunder.

III. Comment

The Commission received one comment letter.[4] The commenter, which is an NSCC member, objects to the proposed rule change because it believes that the requirement under the proposed rule change to check NSCC's website on a daily basis for notices would require it to allocate special staffing to monitor the website and would be an inefficient use of its resources.

IV. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The timely dissemination of information to clearing corporation members is an important factor in the operation of a clearing agency. By allowing NSCC to post notices on its website instead of having to mail, put into a drop box, or fax, the proposed rule change should help to ensure that NSCC's members receive information from NSCC as quickly as possible and in a manner that is easily accessible. Furthermore, elimination of paper notices should reduce the possibility of nonreceipt of notices by members and should add efficiencies to NSCC's operations. Accordingly, the proposed rule change should help to promote the prompt and accurate clearance and settlement of securities transactions.

In response to the comment letter, the Commission appreciates that the proposed rule change imposes a new burden on NSCC's members to periodically look for notices on NSCC's website instead of receiving them in physical form; however, the Commission believes this burden is small given the minimal amount of time it should take each NSCC member to review NSCC's website for notices. Furthermore, the Commission believes that any inconvenience or expense that may be incurred by NSCC's members as a result of the proposed rule change is outweighed by the benefit of having the notices be quickly and readily available to NSCC's members.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2003–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17395 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50069; File No. SR–OCC–2004–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct an Erroneous Cross-Reference Resulting From an Approved Rule Change

July 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 15, 2004, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49094 (January 16, 2004), 69 FR 3418.

[3] Letter from Richard Eustice, Vice President, Dimensional Fund Advisors (April 25, 2003).

[4] *Supra* note 3.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to correct an erroneous cross-reference in Rule 101.E.(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to correct an erroneous cross-reference in Rule 101.E.(6). OCC's recently approved rule filing SR–OCC–2003–08 significantly restructured and revised Chapter IX of OCC's Rules, which pertains to delivery settlement of exercised equity options and matured stock futures.[3] One of the changes renumbered Rule 902 as Rule 903. OCC neglected to change Rule 101.E.(6), which cross-references Rule 902 now renumbered as Rule 903. With this filing, OCC will change the reference to Rule 902 in Rule 101.E.(6) to Rule 903.

The proposed rule change is consistent with section 17A(a)(2)(A)(i) of the Act[4] and the rules and regulations thereunder because it facilitates the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act[5] and Rule 19b–4(f)(1)[6] thereunder because the proposed rule change facilitates the administration of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2004–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2004–15 and should be submitted on or before August 20, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17387 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50080; File No. SR–OCC–2004–12]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Clearing Fees for Securities Option Contracts

July 26, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 22, 2004, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Securities Exchange Act Release No. 49420 (March 16, 2004), 69 FR 13345 (March 22, 2004) [File No. SR–OCC–2003–08].

[4] 15 U.S.C. 78q–1(a)(2)(A)(i).

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to reduce certain clearing fees for securities option contracts. The reduction was effective July 1, 2004.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to reduce OCC's clearing fees for securities option contracts, effective July 1, 2004, as follows:

Contracts per trade	Current per contract per trade fee	July 1, 2004 contract per trade fee
0–500	$0.0825	$0.07
501–1,000	$0.0675	$0.06
1,001–2,000	$0.0575	$0.05
> 2,000	$110.00 (capped)	$95.00 (capped)

This is the second fee reduction made this year by OCC in recognition of the continuing strong volume in securities options in 2004. OCC believes that this fee reduction will financially benefit clearing members and other market participants without adversely affecting OCC's ability to meet its expenses and maintain an acceptable level of retained earnings. Effective the first trading day of 2005, clearing fees will revert to the fee schedule in effect before July 1, 2004.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to OCC because it allows for the equitable allocation of reasonable dues, fees, and other charges among OCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2004–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–12 and should be submitted on or before August 20, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17392 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50082; File No. SR–PCX–2004–68]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Extension of a Linkage Fee Pilot Program

July 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 21, 2004, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees and Charges For Exchange Services to extend until July 31, 2005 the current pilot program regarding transaction fees charged for trades executed through the intermarket options linkage (''Linkage''). The text of the proposed fee schedule is available at the principal office of Exchange and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend for one year the pilot program establishing PCX fees for Principal (''P'') Orders and Principal Acting as Agent (''P/A'') Orders executed through Linkage. The fees currently are effective for a pilot program set to expire on July 31, 2004, and this filing would extend the fees through July 31, 2005. The two fees the PCX charges for P and P/A Orders are: the $.21 per contract side basic execution fees for trading on the PCX and a $.05 comparison fee per contract side. These are the same fees that all PCX Option Trading Permit Holders pay for non-customer transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[4] in general, and section 6(b)(4),[5] in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other persons using its facilities for the purpose of executing P and P/A Orders that are routed to the Exchange from other market centers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2004–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–68 and should be submitted on or before August 20, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX to Nancy Sanow, Assistant Director, Commission, dated July 20, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposes to make technical corrections to the Schedule of Fees and Charges for Exchange Services, originally submitted as Exhibit A to the proposed rule change.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

and regulations thereunder, applicable to a national securities exchange,[6] and, in particular, with the requirements of section 6(b) of the Act[7] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act,[8] which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2005 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[9] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the PCX and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[10] that the proposed rule change, as amended, (SR–PCX–2004–68) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17386 Filed 7–29–04; 8:45 am]

BILLING CODE 8010–01–P

[6] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9ZN2]

State of Alaska

Fairbanks North Star Borough and the Alaska Gateway Regional Education Attendance Area (REAA) and the contiguous areas of Denali Borough, Copper River REAA, Delta/Greely REAA, Yukon Flats REAA, and the Yukon-Koyukuk REAA in the State of Alaska constitute an economic injury disaster area as a result of wildfires that began on June 7, 2004, and continue to burn. The wildfires were caused by lightning strikes, hot temperatures, low humidity, winds and prevailing dry conditions and have caused businesses to suffer substantial economic losses due to smoke and road closures. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on April 22, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 419004, Sacramento, CA 95610.

The interest rate for eligible small businesses and small agricultural cooperatives is 2.750 percent.

The number assigned for economic injury for this disaster is 9ZN200.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: July 22, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–17435 Filed 7–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3599]

State of Maryland

Cecil County and the contiguous counties of Harford and Kent in the State of Maryland; New Castle County in the State of Delaware; and Chester and Lancaster Counties in the Commonwealth of Pennsylvania constitute a disaster area as a result of flooding that occurred on July 12 and 13, 2004. Applications for loans for physical damage as a result of the disaster may be filed until the close of business on September 21, 2004 and for economic injury until the close of business on April 25, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	5.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.750
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 359906 for Maryland, 360006 for Delaware, and 360106 for Pennsylvania. The number assigned to this disaster for economic injury is 9ZM800 for Maryland, 9ZM900 for Delaware, and 9ZN100 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–17433 Filed 7–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3595]

State of Michigan; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective July 22, 2004, the above numbered declaration is hereby amended to include Eaton, Muskegon, Saginaw, and Washtenaw Counties as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on May 20 and continuing through May 24, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Oceana in the State of Michigan may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 30, 2004, and for economic injury the deadline is March 30, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 26, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–17434 Filed 7–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing. 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's 8(a) Business Development Program.

DATES: Comments and sources must be submitted on or before August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 205–7280; or by e-mail at *edith.butler@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act)15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. 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 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class 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 six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on June 29, 2004 to waive the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing. In response, SBA is currently processing a request to waive the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing, North American Industry Classification System (NAICS) 339920. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Authority: 15 U.S.C. 637(a)(17).

Dated: July 22, 2004.

Barry S. Meltz,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–17436 Filed 7–29–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW, Washington, DC 20503, Fax: 202–395–6974.

(SSA)

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Employee Identification Statement—20 CFR 404.702—0960–0473.* The information collected on Form SSA–4156 is needed in scrambled earnings situations when two or more individuals have used the same social security number (SSN), or when an employer (or employers) have reported earnings for two or more employees under the same SSN. The information on the form is used to help identify the individual (and the SSN) to whom the earnings belong. The respondents are employers who have reported erroneous wages.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 4,750.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 792 hours.

2. *The Census Bureau Survey of Income and Program Participation (SIPP) on Behalf of the Social Security Administration (SSA)—0960–NEW.* SSA has requested the Census Bureau to include in its SIPP interviews scheduled for January 2005 a sample of social security disabled insurance beneficiaries and supplemental security income recipients. SSA will use these data to conduct statistical research of recipients of SSA-administered programs. The SIPP for SSA Beneficiaries is a household-based survey molded around a central ''core'' of labor force and income questions. The core is supplemented with questions designed to address specific needs, such as obtaining information about assets and liabilities, as well as

expenses related to work, health care, child support and real estate/dependent care. These supplemental questions are included with the core and are referred to as ''topical modules.''

The topical modules for the SIPP for SSA Beneficiaries collect information about:

- Medical Expenses and Utilization of Health Care (Adults and Children)
- Work-Related Expenses, Child Support Paid and Child Care Poverty
- Assets, Liabilities, and Eligibility
- Dependent Care.

The survey will include approximately 2,000 households. We estimate that each household will average 2.1 people, yielding 4,200 interviews. On average interviews take 45 minutes. The survey interviews will be conducted from January 1, 2005 through January 31, 2005.

Type of Request: New Information Collection.

Number of Respondents: 4,200.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 3,150 hours.

3. *Request for Waiver of Special Veterans Benefits (SVB) Overpayment Recovery or Change in Repayment Rate—0960–NEW*

Background

Section 251 of the Foster Care Independence Act of 1999, P.L. 106–169, added Title VIII to the Social Security Act (Special Benefits for Certain World War II veterans). Title VIII allows for the payments of monthly benefits to qualified World War II veterans who reside outside the United States. When an overpayment in SVB occurs, the beneficiary can request a waiver of recovery of the overpayment or a change in the overpayment rate.

The Information Collection

Form SSA–2032–BK will be used by SSA to obtain the information necessary to determine whether the provisions of the Act regarding waiver of recovery of the overpayment are met. The information on the form is needed to determine a repayment rate if repayment cannot be waived. The information will be collected by personnel in SSA field offices, U.S. Embassies or consulates, or the Veterans Affairs Regional Office in the Philippines. Respondents to the SSA–2032 are beneficiaries who have overpayments on their Title VIII record and wish to file a claim for waiver of recovery or change in repayment rate.

Type of Request: New Information Collection.

Number of Respondents: 39.

Frequency of Response: 1.

Average Burden Per Response: 120 minutes.

Estimated Annual Burden: 78 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Representative Payee Evaluation Report—20 CFR 404.2065 and 416.665—0960–0069.* The information on form SSA–624 is used by SSA to accurately account for the use of Social Security benefits and Supplemental Security Income payments received by representative payees on behalf of an individual. The respondents are individuals and organizations who received form SSA–623 or SSA–6230 (Representative Payee Report) and failed to respond, provided unacceptable responses that could not be resolved or reported a change in custody.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 252,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Average Burden: 126,000 hours.

2. *Disability Hearing Officer's Report of Disability Hearing—20 CFR 416.1407, 404.917, and 416.1417—0960–0440.* The information on Form SSA–1205–BK is used by the Disability Hearing Officers (DHOs) at the Social Security Administration (SSA) as a guide to conducting and recording disability hearings. It ensures that all of the pertinent issues are considered. The respondents are DHOs in the State Disability Determination Services and Federal DHOs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 100,000 hours.

3. *Waiver of Your Right to Personal Appearance Before an Administrative Law Judge—20 CFR 404.948(b)(l)(i) and 416.1448(b)(l)(i)—0960–0284.* Each claimant has a statutory right to appear in person (or through a representative) and present evidence about his/her claim at a hearing before an Administrative Law Judge (ALJ). If a claimant wishes to waive his/her statutory right to appear before an ALJ, he/she must complete a written request. The claimant may use Form HA–4608 for this request. The information collected is used to document an individual's claim to show that an oral hearing is not preferred in the appellate process. The respondents are applicants for Social Security and Supplemental Security Income benefits who request a hearing.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 400 hours.

4. *Beneficiary Recontact Report—20 CFR 404.703 and 404.705—0960–0536.* SSA collects the information on Form SSA–1587 to ensure that eligibility for benefits continues after entitlement is established. SSA asks representative payees of children ages 15–17 information about marital status to detect possible overpayments and avoid continuing payment to those no longer entitled. Studies show that the representative payees of children who marry often fail to report the marriage, which is a terminating event. The respondents are payees who receive Title II (Old-Age, Survivors and Disability Insurance) benefits on behalf of children ages 15–17.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 982,357.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Annual Burden: 49,118.

5. *Request for Correction of Earnings Record—20 CFR 404.820 and 422.125–0960–0029.* Form SSA–7008 is used by individual wage earners to request SSA review, and if necessary correction of the Agency's master record of their earnings. The respondents are individuals who question SSA's record of their earnings. **Note:** Please note that the burden data listed below differ from those published in the 60-day advance Notice at 69 FR 31442. This discrepancy is due to the Agency receiving updated burden information since publication of the 60-day Notice.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 375,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 62,500 hours.

6. *Statement of Agricultural Employer (Years prior to 1988); Statement of*

Agricultural Employer (1988 and later)—20 CFR 404.702, 404.802, and 404.1056—0960–0036. The information on forms SSA–1002 and SSA–1003 is used by SSA to resolve discrepancies when farm workers allege their employers did not report their wages or reported them incorrectly. The respondents are agricultural employers.

Type of Request: Extension of an OMB-approved information collection.

	SSA–1002	SSA–1003
Number of Respondents	75,000	50,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	10 minutes	30 minutes
Estimated Annual Burden (hours)	12,500 hours	25,000 hours

Total Estimated Annual Burden: 37,500 hours.

7. *Medical Report (General)—20 CFR 404.1512–.1515 and 416.912–.915–0960–0052.* The information collected on form SSA–3826–F4 is used by SSA to determine a claimant's physical status prior to making a disability determination. This information is also placed in the claimant's disability claims folder to provide written medical evidence which is used in the disability determination decision. The respondents are physicians, hospitals, directors and medical records librarians.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 375,000 hours.

8. *Request for Change in Time/Place of Disability Hearing—20 CFR 404.914(c)(2) and 416.1414(c)(2)—0960–0348.* The information on Form SSA–769 is used by SSA and the State Disability Determination Services to provide claimants with a structured format to exercise their right to request a change in the time or place of a scheduled disability hearing. The information is used as a basis for granting or denying requests for changes and for rescheduling hearings. The respondents are claimants who wish to request a change in the time or place of their disability hearing.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 7,483.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 998 hours.

9. *Agency/Employer Government Pension Offset Questionnaire—20 CFR 404–408a–0960–0470.* The information collected by form SSA–L4163 provides SSA with accurate information from the agency paying a claimant's pension. This form is only used when (1) the claimant does not have the necessary information and (2) the pension-paying agency has not cooperated with the claimant in providing this information. Respondents are Federal, State, or local government agencies that have information needed by SSA to determine whether the Government Pension Offset provisions apply and if so, what is the amount of the offset.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 50 hours.

10. *Letter to Custodian of Birth Records/Letter to Custodian of School Records—20 CFR 404.704, 404.716, 416.802, and 422.107–0960–NEW.* The information collected by form SSA–L706 is used to assist a claimant in obtaining evidence necessary to establish a date of birth. The respondents are applicants for Social Security benefits.

Type of Request: New information collection.

Number of Respondents: 7,200.

Frequency of Response: 1.

Average Burden Per Response: 10

Estimated Annual Burden: 1,200 hours.

11. *Certificate of Coverage Request Form—0960–0554.* The United States (U.S.) has Social Security agreements with 20 countries. These agreements eliminate double Social Security coverage and taxation where a period of work would be subject to coverage and taxes in both countries. The individual agreements contain rules for determining the country under whose laws the period of work will be covered and to whose system taxes will be paid. The agreements further provide that upon the request of the worker or employer, the country under whose system the period of work is covered will issue a certificate of coverage. The certificate serves as proof of exemption from coverage and taxation under the system of the other country. The information collected is needed to determine if a period of work is covered by the U.S. system under an agreement and to issue a certificate of coverage. The respondents are workers and employers wishing to establish an exemption from foreign Social Security taxes.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 46,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 23,000 hours.

Dated: July 23, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–17333 Filed 7–29–04; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are new information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Application for Medicare Prescription Drug Cost-Sharing Subsidy—0960–NEW.* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173; MMA) establishes a new Medicare Part D program for voluntary prescription drug coverage for premium, deductible and cost-sharing subsidies for certain low-income individuals. The MMA stipulates that subsidies must be available for individuals who are eligible for the program and who meet eligibility criteria for subsidization of premium, deductible, and/or co-payment costs. Form SSA–1020, the Application for Medicare Prescription Drug Cost-Sharing Subsidy, collects information about an applicant's income and assets and is thus used by SSA to determine eligibility for this assistance. The respondents are individuals who are eligible for enrollment in the new program and are requesting assistance with the related costs.

Type of Request: New information collection.

Number of Respondents: 5,000,000.

Frequency of Response: 1.

Average Burden Per Response: 35 minutes.

Estimated Annual Burden: 2,916,667 hours.

2. *Request for Appeal of Medicare Part D Subsidy Determination—0960–NEW.* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173; MMA) establishes a new Medicare Part D program for voluntary prescription drug coverage and provides for premium, deductible, and cost-sharing subsidies for certain low-income individuals. An individual must be entitled to benefits under Medicare Part A or be enrolled in Medicare Part B to qualify for subsidization. SSA will make subsidy eligibility determinations and appeal decisions for voluntary Medicare prescription drug coverage. Form SSA–1021, the Request for Appeal of Medicare Part D Subsidy Determinations, was developed to obtain information from individuals who appeal SSA's decisions regarding eligibility or continuing eligibility for a Medicare Part D subsidy. The respondents are applicants who are appealing SSA's eligibility or continuing eligibility decisions.

Type of Request: New information collection.

Number of Respondents: 37,500.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 5,000 hours.

Dated: July 26, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–17353 Filed 7–29–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

Memorandum for Global AIDS Coordinator

Delegation of Authority Number: 145–18.

Subject: Delegation of certain authority under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 and the Foreign Assistance Act of 1961, as amended.

By virtue of the authority vested in me by the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq.*, section 1 of the State Department Basic Authorization Act, as amended, and Executive Order 12163, as amended, and (the presidential memorandum delegating to me ''Certain Authority Under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003''), section 1 of the State Department Delegation of Authority No. 145 of February 4, 1980 (45 FR 11655), as amended, is hereby amended by inserting at the end the following new subsection:

(p) To the Global AIDS Coordinator:

(1) the functions and authority conferred upon the President by sections 202(c), 305, and 313 of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108–25), and by section 104A(e) of the Foreign Assistance Act of 1961, as amended by Pub. L. 108–25, to provide the specified reports to the Congress;

(2) the authority conferred upon the President by section 101 of Public Law 108–25 to establish a comprehensive, integrated, 5-year strategy to combat global HIV/AIDS and to submit to the appropriate congressional committees a report setting forth the strategy.''

This delegation of authority shall be published in the **Federal Register**.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 04–17404 Filed 7–29–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Greenville-Spartanburg International Airport, Greer, South Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Greenville-Spartanburg Airport Commission to waive the requirement that a 17.89–acre parcel (Tract 8), a 20.25–acres parcel (Tract 9), and a 4.07–acre parcel (Tract 19) of surplus property, located at the Greenville-Spartanburg International Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before August 30, 2004.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Tracie D. Kleine, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. J. Garrett Jackson, AAE, Executive Director of the Greenville-Spartanburg Airport Commission at the following address: 2000 GSP Drive, Suite 1, Greer, SC 29651.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Greenville-Spartanburg Airport Commission to release 42.21 acres of surplus property at the Greenville-Spartanburg International Airport. This fee simple title transfer of land to the South Carolina Department of Transportation (SCDOT) is for the purpose of providing Right-of-Way (ROW) for the second

phase of construction for the J. Verne Smith Parkway and for the reconstruction of Airport Interchange and Interstate 85. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Greenville-Spartanburg Airport Commission.

Issued in Atlanta, Georgia on July 23, 2004.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 04–17408 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Notice of Intent To Rule on Request To Release Airport Property at the Jeffco Airport, Broomfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Jeffco Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 30, 2004.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Phillip Braden, Assistant Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Troy Stover, Manager, Jeffco Airport, 11755 Airport Way, Broomfield, Colorado 80021.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Fredericksen, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Jeffco Airport under the provisions of the ARI 21.

On July 9, 2004, the FAA determined that the request to release property at the Gunnison-Crested Butte Regional Airport submitted by the County of Gunnison, Colorado met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than January 31, 2005.

The following is a brief overview of the request: The Jeffco Airport requests the release of 14.958 acres of airport property from aeronautical use to non-aeronautical use. The purpose of this release is to allow Jeffco Airport to lease the subject land to non-aeronautical businesses since it no longer serves any aeronautical purpose at the airport. The release of this parcel will provide revenue for airport improvements and maintenance.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, inspect the application, notice and other documents germane to the application in person at the Jeffco Airport, 11755 Airport Way, Broomfield, Colorado 80012.

Issued in Denver, Colorado on July 9, 2004.

Philip Braden,

Assistant Manager, Denver Airports District Office.

[FR Doc. 04–17403 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Knox County Regional Airport, Rockland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the Knox County, Maine request to change a portion (4.8 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located at the intersection of Ash Point and Dublin Roads in Owls Head, Maine. The land is vacant and serves to protect the part 77 surfaces to Runway 31. The land will be leased to the Town of Owls Head, Maine for use as a cemetery. The property was acquired under FAA Project Numbers FAAP 9–17–017–C902 and AIP 3–23–0042–07.

The disposition of proceeds from the lease of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before August 30, 2004.

ADDRESSES: Documents are available for review by appointment by contacting Mr. Jeffrey Northgraves, Airport Manager at Knox County Regional Airport, Owls Head, Maine, Telephone 207–594–4131 and by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Dated: Issued in Burlington, Massachusetts on July 21, 2004.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 04–17405 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: The FMCSA announces its denial of 81 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck drivers and the reasons for the denials. The FMCSA has statutory authority to exempt individuals from the vision standard if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions does not provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial motor vehicle drivers.

FOR FURTHER INFORMATION CONTACT: Ms. W. Teresa Doggett, Office of Bus and Truck Standards and Operations, (MC–

PSD), (202) 366–2990, Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption (49 CFR 381.305(a)).

Accordingly, FMCSA evaluated 81 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria established to demonstrate that granting an exemption is likely to achieve an equal or greater level of safety than exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her individual exemption request. Those decision letters fully outlined the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reason for denials.

The following 42 applicants lacked sufficient recent driving experience over three years:

Anagnostou, Hristodoulos G.
Anderson, Marvin E.
Beermann, Gary W.
Casson, Robert A.
Chandler, Bobby Lee
Davis, Bernice F.
DeZutel, Jr., Edmund F.
Dikkers, Kenneth J.
Dixon, Russell R.
Eckenroth, Ronald C.
Garcia, Humberto
Gruszecki, Ronald J.
Hetteroth, Anthony D.
Hildebrand, Todd A.
Holt, Lane D.
Houser, Leonard J.
Irwin, Ronald R.
Kosen, Lance B.
Kyle, Everett R.
Lopez, Jose A.
Luff, Timothy L.
Mackey, Ray C.
McCoy, Rickie
Mitchell, Allen R.
Mumaw, David P.
Noonan, Robert
Norman, Anthony J.
Partridge, Gary S.
Pender, Scott W.
Rooker, Jr., John H.
Russler, James S.
Shirk, Dean R.
Sopko, Michael
Thompson, Robert M.
Tucker, Raymond R.
VanWormer, John R.
Vette, Charles
Voltz, Jeffrey A.
Walker, Scott C.
Warren, Claude E.
Widener, Wallis G.
Wood, Nathen G.

Two applicants, Ms. Debra K. Anderson and Mr. David Williford, do not have experience operating a commercial motor vehicle (CMV) and therefore presented no evidence from which FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

The following 15 applicants do not have 3 years of experience driving a CMV on public highways with the vision deficiency:

Beanblossom, Theodore
Cardwell, David G.
Fitzgerald, David P.
Gamble, Charles E.
Gebhardt, Randy N.
Huelster, Randy L.
Latham, Bernard
Lefew, Charlie H.
Marlatt, George
Presholt, David M.
Sowders, James R.
Storm, Stacey L.
Tart, Tony M.
White, James F. E.
Wolfe, Michael D.

The following 7 applicants do not have 3 years of recent experience driving a CMV with the vision deficiency:

Clark, Sr., Freddie C.
Colvin, David L.
DeBruler, Gregory L.
Glaser, Harlan D.
Hall, Samuel D.
Leonard, Sr., Robert L.
Wallace, Billy G.

One applicant, Mr. Richard L. Gandee, does not need the exemption because he meets the vision requirements of 49 CFR 391.41(b)(10).

The following 6 applicants' commercial drivers' licenses were suspended during the 3-year period because of a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period.

Figueroa, Gerardo
Green, Britt A.
Harris, Robert A.
Hilby, Glen G.
Ogburn, Will H.
Weber, Chic

The following 4 applicants contributed to a crash while operating a CMV, which is a disqualifying offense.

Grubbs, Bobby D.
Jones, Harold D.
Risch, Michael J.
Ward, Dennis

Two applicants, Mr. Dick A. Schwab and Mr. Edward K. Flood, did not hold licenses which allow operation of a CMV over 10,000 pounds gross vehicle weight rating for all or part of the 3-year period.

One applicant, Mr. Paul T. Breitigan, has a vision deficiency that has been unstable during the 3-year period.

One applicant, Mr. John C. Mason, refused to provide required documentation and therefore presented no verifiable evidence from which FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

Issued on: July 23, 2004.

Rose A. McMurray,

Associate Administrator for Policy and Program Development.

[FR Doc. 04–17412 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–04–18698]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before September 28, 2004.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Delmas Johnson, NHTSA 400 Seventh Street, SW., Room 5312, NPO–200, Washington, DC 20590. Mrs. Johnson's telephone number is (202) 366–1788. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Generic Clearance for Customer and External Stakeholder Surveys.

OMB Control Number: 2127–0579.

Affected Public: Individuals or households are primary survey respondents. Businesses or other for-profit, not-for-profit institutions, Federal agencies, and State, local or tribal governments are other possible survey respondents.

Abstract: Executive Order 12862, mandates that agencies survey their customers to identify the kind and quality of services they want and their level of satisfaction with existing services. Other requirements include the Governmental Performance and Results Act (GPRA) of 1993 which promotes a new focus on results, service quality, and customer satisfaction. NHTSA will use surveys of the public and other external stakeholders to gather data as one input to decision-making on how to better meet the goal of improving safety on the nation's highways. The data gathered on public expectations, NHTSA's products and services, along with specific information on motor vehicle crash related issues, will be used by the agency to better structure its processes and products, forecast safety trends and achieve the agency's goals.

Estimated Annual Burden: 13,468.

Number of Responses: 131,334.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Delmas Maxwell Johnson,

Associate Administrator for Administration.

[FR Doc. 04–17432 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34508]

Central Railroad Company of Indianapolis—Lease and Operation Exemption—CSX Transportation, Inc.

The Central Railroad Company of Indianapolis, Chicago, Ft. Wayne & Eastern Railroad Division (CFER), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to an agreement with CSX Transportation, Inc. (CSXT), approximately 273 miles of rail line as follows: (1) The Fort Wayne line between Adams, IN, milepost QF 314.0, and Crestline, OH, milepost QF 191.3; (2) the Fort Wayne Secondary between Tolleston, IN, milepost QF 441.8, and Adams, IN, milepost QF 314.0; (3) the Decatur Second between Adams, IN, milepost QFD 86.6, and Decatur, IN, milepost QFD 70.4; and (4) the Spore Industrial Track between Bucyrus, OH, milepost QFS 69.32, and Spore, OH, milepost QFS 62.85. In addition, CFER will acquire incidental trackage rights over New York Central Lines LLC's (NYC) Fort Wayne Secondary, operated by CSXT, between approximate milepost PC 441.0 near Tolleston, IN, and the connection of NYC's East-West Line, operated by CSXT, with lines of Indiana Harbor Belt Railroad Company (IHB) at IHB milepost 7.0 approximately at Calumet Park, IL, via: (1) NYC's Fort Wayne Secondary between milepost 441.0 and connection of Fort Wayne Secondary with CSXT's Porter Branch at Porter Branch milepost 255.1 at Tolleston; (2) Porter Branch between milepost 255.1 and connection of Porter Branch with CSXT's East-West Line at Porter Branch milepost 259.5 at CP Ivanhoe, IN; and (3) East-West Line between milepost 255.1 and the connection of the East-West Line with IHB-owned trackage at approximately IHB milepost 7.0 at Calumet Park, IL, a total distance of approximately 12.2 miles.[1]

Because CFER's projected annual revenues will exceed $5 million, CFER certified to the Board on May 20, 2004, that it sent the required notice of the transaction on May 18, 2004, to the national offices of all labor unions representing employees on the line and posted a copy of the notice at the workplace of the CSXT employees on the affected lines on May 18, 2004. *See* 49 CFR 1150.42(e).[2] The transaction is scheduled to be consummated on August 1, 2004.

If the verified notice contains false or misleading information, the exemption

[1] CFER indicates that it is negotiating an agreement with CSXT for CFER's lease and operation of the line.

[2] On June 30, 2004, CFER requested a waiver of the Board's 60-day advance notice requirements at 49 CFR 1150.42(e) as to four employees of Norfolk Southern Railway Company (NS) in Pittsburgh, PA, who dispatch the line and who may be affected by this transaction. The Board granted this waiver request in a decision served July 15, 2004, so that the transaction could go forward without waiting until 60 days after certification that notice had been posted for the NS dispatchers, but directed that notice of the transaction be posted no later than July 19, 2004, at the workplace of the four NS dispatchers. In a letter filed on July 19, 2004, NS certified that such notice was posted on that date.

is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34508, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Gary A. Laakso, Vice President Regulatory Counsel, Central Railroad Company of Indianapolis, 5300 Broken Sound Blvd., NW., Boca Raton, FL 33487, and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: July 26, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–17325 Filed 7–29–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 (Federal Advisory Committee act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review board will be held on August 30–September 2, 2004, at the Sofitel Hotel, 806 15th Street, NW., Washington, DC. The sessions are scheduled to begin at 8 a.m. and end at 5:30 p.m. each day.

The purpose of the Board is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the August 30 and September 1 sessions from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program and the administrative details of the review process. The meeting will be closed on August 30–September 2 from 9 a.m. to 5:30 p.m. for the Board's review of research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at (202) 254–0054.

Dated: July 22, 2004.

E. Philip Riggin

Committee Management Officer.

[FR Doc. 04–17414 Filed 7–29–04; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 69, No. 146

Friday, July 30, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of Civil Rights; Notice of Intent to Seek Approval to Collect Information

Correction

In notice document 04–14193 beginning on page 34990 in the issue of Wednesday, June 23, 2004, make the following correction:

On page 34990, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the seventh line, ''*Joe.mcneill@Usda.go* '' should read ''*Joe.mcneill@Usda.gov.* ''

[FR Doc. C4–14193 Filed 7–29–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
July 30, 2004

Part II

Department of Housing and Urban Development

Homeless Management Information Systems (HMIS); Data and Technical Standards Final Notice; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4848–N–02]

Homeless Management Information Systems (HMIS); Data and Technical Standards Final Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development (HUD).

ACTION: Final notice.

SUMMARY: This notice implements data and technical standards for Homeless Management Information Systems (HMIS). The final Notice follows publication of a draft Notice on July 22, 2003.

DATES: Effective Date: August 30, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Roanhouse, Office of Special Needs Assistance Programs, Office of the Assistant Secretary for Community Planning and Development, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone (202) 708–1226, ext. 4482 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The July 22, 2003 Draft Notice

On July 22, 2003 (68 FR 43430), HUD published a draft Notice that described the data and technical standards for implementing HMIS. An HMIS is a computerized data collection application that facilitates the collection of information on homeless individuals and families using residential or other homeless assistance services and stores that data in an electronic format. Because an HMIS has the capacity to integrate data from all homeless service providers in the community and to capture basic descriptive information on every person served, it is a valuable resource for communities. HMIS can be employed to: better understand the characteristics of homeless persons in the community, including their demographic characteristics, patterns of homelessness, and use of services; improve the delivery of housing and services to specific sub-populations such as veterans or persons experiencing chronic homelessness; and assess and document the community's progress in reducing homelessness.

Over the past several years, Congress has directed HUD to assist local jurisdictions in implementing HMIS and in using data from these systems to understand the size and characteristics of the homeless population, analyze local patterns of services usage, and assess local service needs. HUD's goals for the development of local HMIS are threefold:

1. Bringing the power of technology to the day-to-day operations of individual housing and service providers;

2. Knitting together housing and service providers within a local community into more coordinated and effective delivery systems for the benefit of homeless clients; and

3. Obtaining and reporting critical aggregate information about the characteristics and service needs of homeless persons.

To achieve these goals, HUD has initiated a yearlong process to develop national data and technical standards for HMIS. The standards have been developed with extensive input from an expert panel composed of practitioners, advocates, government representatives and researchers. The composition of the expert panel was designed to make sure that the need for addressing key policy questions would be balanced against practical considerations about the data collection environment.

A draft Notice that outlined the data and technical standards was published in July 2003, to permit Continuums of Care (CoC) (local bodies that plan for and coordinate homeless services), homeless service providers, local and State governments, advocates and homeless clients an opportunity to review and comment on the proposed standards. The draft Notice was divided into five sections.

Section 1, the Introduction, presented background information on the Congressional direction on improving homeless data collection and analysis at the local and national levels, and specific statutorily based programmatic and planning requirements for addressing homeless needs. This section also described HUD's major policy decisions regarding HMIS and the benefits of developing an HMIS for homeless persons, local homeless assistance providers, CoCs and national policy makers.

Section 2, the Universal Data Elements, described the data elements that are to be collected from all clients served by all homeless assistance programs reporting to the HMIS. Universal data elements (including date of birth, gender, race, ethnicity, and veteran's status) are needed for CoCs to understand the basic dynamics of homelessness in their communities and for HUD to meet Congressional direction to: develop unduplicated counts of homeless service users at the local level; describe their characteristics; and identify their use of homeless assistance and mainstream resources.

Section 3, the Program Level Data Elements (called Program-Specific Data Elements in the final Notice), described data elements that are required for programs receiving certain types of funding, but are optional for other programs. Most program-specific data elements are required for programs that receive funding under the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act) (42 U.S.C. 11301 *et seq.*) and complete Annual Progress Reports (APRs). In the future HUD intends to use HMIS data as a basis for grantees to complete APRs.

Finally, *Section 4, Standards for Data Confidentiality and Security,* and *Section 5, Technical Standards,* described how data are to be safeguarded and the technical requirements for HMIS applications and for the CoCs or other entities responsible for storing HMIS data.

II. Significant Differences Between the July 22, 2003, Draft Notice and This Final Notice

The final Notice takes into consideration the public comments received on the July 22, 2003 draft Notice. After reviewing the public comments, the significant changes described below have been made to the Notice.

1. *The methodology for obtaining data has been made less prescriptive.* The final Notice no longer prescribes a methodology for obtaining the data, as long as the definitions of the data elements are used to collect client information. This allows housing and service providers the flexibility to collect the required information in ways that are suitable for the operation of their programs and their local circumstances. For many providers, there may be very few changes in the way they already obtain information from clients.

Specifically, the data standards have been changed from a survey format that presented both recommended questions and required response categories for each data element to a format that specifies only the required response categories. The draft Notice included questions for obtaining each data element to ensure collection of consistent information across communities. To meet the same objective, the final Notice includes a definition of each data element and the required response categories, but does not mandate the procedures for

collecting the information. Data collection procedures can be tailored to meet the circumstances of providers as long as the collected information is consistent with the definition of the data element. Also, follow-up questions and corresponding data fields for use when a client provides only partial answers have been removed. For providers that want to use the questions, they are presented in Exhibits 2 and 4 of the final Notice.

The timing of the data collection has also been made more flexible so that providers can choose the time most appropriate to collect the information. One important exception involves Disabling Condition, a data element that was added to the universal data standards in the final Notice. As discussed in the final Notice, providers are required to collect a client's disability status only after the client has been accepted into the program, unless disability is an eligibility criterion for the program (such as disability status for the Shelter Plus Care program or HIV status for the Housing Opportunities for Persons with AIDS Program). Instructions for the program-specific data standards allow providers to collect the information at the time when it makes most sense, for example, during a client needs assessment, or provision and monitoring of services, or from case management records.

Finally, the final Notice acknowledges that providers or communities can collect additional data elements to meet other information needs in the community. Also, required response categories can be disaggregated to meet local information needs, as long as the locally-developed response categories can be aggregated to the response categories for each data element in the final Notice. For example, programs may choose to collect more detailed information regarding a client's residence prior to program entry by disaggregating the emergency shelter response category into several categories (hotel, motel, campground paid for with emergency shelter voucher, particular type of crisis shelter or runaway youth shelter). For reporting purposes, the more detailed categories must be combined into the emergency shelter response category.

2. *Privacy and security standards are more flexible than in the draft Notice.* This final Notice has been revised to provide housing and service providers more flexibility in implementing privacy and security standards, while establishing minimum requirements for protecting HMIS data. The revised standards establish policies and procedures for addressing the privacy and confidentiality of information collected by HMIS, while allowing for reasonable and responsible uses and disclosures of data.

The privacy and security section provides baseline standards required of all programs that record, use or process HMIS data. The baseline standards are based on principles of fair information practices and security standards recognized by the information privacy and technology communities as appropriate for securing and protecting personal information. The section also identifies additional protocols or policies that communities may choose to adopt to further ensure the privacy and confidentiality of information collected through HMIS. Programs are encouraged to apply these additional protections as needed to protect client confidentiality. Programs may also implement other forms of protections not specified in the Notice as long as these protections do not conflict with the standards in this Notice.

The revision has been made in recognition of the broad diversity of programs involved in HMIS and the various programmatic and organizational realities that may prompt some programs to implement higher standards. While some programs (*e.g.*, programs that serve particularly vulnerable populations) strive to implement the highest level of privacy and security standards possible because of the nature of their homeless population and/or service provision, other programs (*e.g.*, programs that serve large numbers of clients daily) may find higher standards excessively prescriptive and overly burdensome. At a minimum, however, all programs must meet the baseline requirements described in the Notice.

III. Discussion of the Public Comments Received on the July 22, 2003, Draft Notice

The public comment period for the proposed Notice closed on September 22, 2003. HUD received comments on the draft Notice from 167 commenters, representing a variety of organizations and entities. Comments were received from: members of CoCs and homeless service providers; disability and domestic violence advocacy groups; homeless and low-income housing advocacy organizations; HMIS software vendors; legal and privacy organizations; Federal, State, county and city government agencies; a public housing authority; consulting firms and research organizations; academia; and the general public. Overall, more than 1,600 distinct comments were made.

The comments expressed a wide range of viewpoints. Very few commenters expressed unqualified support for, or opposition to, the draft Notice. Instead, many commenters mixed broad statements of support with criticisms of specific provisions in the Notice. The statements of support frequently commended HUD for issuing the draft Notice, stating that uniform data collection and technical standards will benefit homeless persons, the programs that serve them, and the policies designed to address homelessness. Some commenters wrote that accurate HMIS data will ''improve services provided to homeless families and individuals,'' help agency staff to ''streamline referrals and coordinated case management'' and comprise ''one of the cornerstones of a comprehensive program to prevent and end homelessness.'' A few commenters urged HUD to expand the scope of the draft Notice by requiring all programs affected by the Notice to share HMIS data, and some commenters recommended adding data elements or questions. However, a few commenters condemned the entire HMIS initiative as invasive of client privacy, burdensome to programs and beyond Congressional intent.

The criticisms raised by the commenters generally focused on the data collection requirements and the privacy and security standards of the draft Notice. A number of commenters expressed concerns that the data collection requirements would be burdensome to program staff or invasive of client privacy. Some commenters believed the proposed requirements would take time away from service provision and potentially discourage clients from seeking services. Other commenters expressed concerns about the implication of the draft Notice for particular subpopulations. Some commenters took the position that the collection of disability-related information and other medical information violates fair housing or privacy laws and could lead to discriminatory housing practices. Several domestic violence groups were particularly concerned with the collection of personal identifying information, and stated that the privacy standards in the Notice were inadequate to protect the safety of domestic violence victims. On the other hand, a number of commenters indicated that the security standards were overly prescriptive and costly to implement.

The following sections of this preamble present a more detailed review of the most significant concerns raised by the public in response to the

July 22, 2003, draft Notice and HUD's response to each concern. The sections proceed as follows:

Section IV of this preamble discusses general comments on the draft Notice.

Section V of this preamble discusses the comments regarding the Universal Data Elements.

Section VI of this preamble discusses the comments regarding the Program-Specific Data Elements.

Section VII of this preamble discusses the comments regarding the Privacy and Security Standards and Technical Standards.

IV. General Comments About the Draft Notice

Several commenters expressed general concerns with the draft Notice that were not associated with specific data elements or technical provisions.

Comment: HUD should not require CoCs to develop HMIS systems. Some commenters wrote that HUD should not require communities to develop HMIS, noting that HMIS could be used to track homeless people and could put some people, particularly vulnerable populations, at risk. Other commenters supported the development of local HMIS. One commenter applauded the Department's efforts to collect better data to further improve services to homeless families and individuals. Another commenter stated that implementation of HMIS had enabled his community to better serve their consumers. Another noted the benefits of HMIS, both in terms of its ability to better inform a community's understanding of the problem of homelessness and as a case management tool for individual providers.

HUD Response: The development of local HMIS began as a grassroots effort over 20 years ago, led by homeless program administrators in a small number of communities across the country. The positive experiences with HMIS in shaping local homeless policies and improving services to homeless clients led the Congress to authorize federal agencies to begin providing support for the local development of HMIS starting in the 1990s.

HUD recognizes that: (1) Development of HMIS can pose a burden on clients and the providers that assist them; and (2) without adequate safeguards, providing data to an HMIS could put a homeless person at risk. However, the burden of data collection must be balanced against the benefits of HMIS, including better coordination and delivery of services to homeless persons and obtaining information that can help providers and policymakers to understand the magnitude of homelessness and the needs of homeless individuals and families. Also, HUD has consulted with information privacy experts to develop privacy and confidentiality standards that are regarded as best practices and providing optional privacy protections for programs that require additional safeguards. HUD is committed to working with CoCs to ensure that adequate safeguards are in place so that information collected through HMIS is protected.

Comment: Clarify HUD's position on the creation of a national database. A few commenters were concerned that the draft Notice contained the necessary elements to create a centralized, nationwide database. These commenters were particularly troubled by the requirement to collect personal identifying information since this information could be used to track homeless persons at the national level.

HUD Response: HUD believes that its position in the draft Notice is clear: ''The HMIS initiative will include no Federal effort to track homeless people and their identifying information beyond the local level.'' As stated in the final Notice, HUD will only require CoCs to report HMIS data in the aggregate and not by individual.

Comment: Funding for HMIS is not adequate. Some commenters noted that there are significant costs associated with implementing an HMIS at the local level (*e.g.*, purchasing software and hardware, training staff, and collecting data on an on-going basis). Several commenters who represented communities with existing HMIS systems noted that significant costs would be associated with changing their system to conform with the proposed data standards. In addition, some commenters expressed concern that HUD funding for HMIS would reduce the resources available for direct services and stated that a separate funding source should be made available for HMIS.

HUD Response: Congress has authorized HUD to provide Federal funding to support the development of HMIS at the local level. Starting in 2001, Congress directed HUD to make HMIS an eligible cost under the Supportive Housing Program (SHP). Subsequently, HUD's 2001, 2002 and 2003 CoC Notice of Funding Announcements allowed CoCs to apply for SHP funding in order to pay for the costs associated with HMIS equipment, software, computer services, managing and operating the system, analyzing HMIS data and producing reports, and training. While planning costs are not an eligible activity under SHP, some communities have used Community Development Block Grant funds to cover HMIS planning costs. (For more information on using SHP and other sources to pay for HMIS implementation, *see HUD's Homeless Management Information System: Implementation Guide,* p. 56.)

Congress has also provided funding for technical assistance on the HMIS initiative. HUD has used these funds to engage experienced technical assistance providers to work with communities across the country to plan for, implement and update HMIS.

Comment: HMIS is not a good way to count homeless people. There are other ways to obtain an estimate of the number of homeless persons and their needs. Some commenters stated that HMIS is not a good way to obtain a count of the number of homeless people in a community because: (1) It only counts persons who are receiving services; and (2) it is invasive and, therefore, will discourage homeless persons from seeking services. Several commenters indicated that a number of organizations in their communities that serve homeless persons do not participate in HMIS, and as a result, their clients would not be included in the HMIS count of homeless persons. These commenters were concerned that using HMIS would lead to undercounts of homelessness and result in cuts in homeless programs. Several commenters stated that HUD could obtain an unduplicated count by conducting annual point-in-time counts of homeless persons. Other commenters stated that HUD could conduct intensive research in a small number of communities to obtain information about the number and characteristics of homeless persons.

HUD Response: HUD agrees that HMIS will not produce an unduplicated count of all homeless persons, but rather an unduplicated count of all homeless persons who use homeless assistance services and participate in HMIS. However, research has shown that, over the course of a year, a very high proportion of homeless persons will use some kind of homeless service; therefore, HMIS will capture information on most homeless persons in a community.

It was also noted that not all housing and service providers in a community participate in HMIS. Obtaining participation of all providers is critical to a comprehensive HMIS system but it will take time. In the near term, HUD will provide guidance to CoCs on how they can use existing HMIS information to estimate the number of persons who are not included in an HMIS because they use services of a non-participating

provider. Technical assistance will also be provided on building broad-based provider participation in local HMIS.

HUD disagrees that small research studies or point-in-time counts will provide information of equal or better quality to HMIS on the characteristics and needs of homeless persons. Point-in-time counts provide information on the number of people experiencing homelessness on a particular day. One of the key benefits of HMIS is that it can produce an accurate count of the number of people in a community who experience homelessness over the course of a year (or some other period of time) and their patterns of homelessness and service use. Generally, HMIS counts reveal a much higher number of persons experiencing homelessness than point-in-time estimates, which tend to under-represent people who are homeless only for short periods.

In-depth research studies are useful for probing into a particular issue, but cannot be used to understand the magnitude of homelessness across a community or beyond particular communities. HMIS can be used for this purpose and, in combination with other data sources (such as in-depth interviews), can be used to explore specific policy-relevant topics in a cost-efficient manner.

Comment: Proposed data collection requirements go beyond Congressional intent. Several commenters stated that the draft data standards go beyond Congressional intent to produce an unduplicated count of homelessness. For example, some commenters stated that questions about physical and behavioral health are irrelevant to Congressional intent and others questioned the need to collect personal identifiers to meet the directive.

HUD Response: HUD disagrees that the data standards go beyond Congressional intent. The draft and final Notice present the Congressional authority for data collection. These include two requirements: First, that HUD grantees assess client needs; and second, that the Interagency Council on Homelessness submit reports to Congress regarding how federal funds are used to meet the needs of homeless persons. Further, as described in the draft and final Notice, Congress has directed HUD (*see* Consolidated Appropriations Act of 2004 [Pub. L. 108–199, approved January 23, 2004], Fiscal Year (FY) 2001 H.R. Report 106–988; Pub. L. 106–377; FY 2001 Senate Report 106–410; and FY 1999 House Report 105–610) to use HMIS data to develop an unduplicated count of homeless persons and to analyze patterns of use of assistance, including how people enter and exit the homeless assistance system, and the effectiveness of such assistance. In the FY 2001 Senate Report 106–410, Congress also expressed concern about the role of mainstream income support and social services programs in addressing the problems of homelessness and has charged HUD and other agencies to identify ways in which mainstream programs can prevent homelessness among those they serve.

Moreover, it would not be possible for HUD to respond to Congressional concerns without obtaining information on the characteristics and needs of homeless persons, including the types of disabilities that may contribute to homelessness. It is also not possible for local providers to determine whether homeless clients are accessing mainstream resources without collecting Social Security Numbers (SSNs) and other personal identifying information. Section V of this preamble discusses the standards regarding the collection of SSNs in more detail.

Comment: The data required for HMIS poses a significant burden on homeless clients and service providers. A number of commenters were concerned about the amount of information to be collected from homeless clients and the personal nature of some of this information. Commenters stated that collecting the information would have numerous negative effects, including: Discouraging homeless persons from seeking services; reducing the amount of time the provider has to provide services; undermining the client/provider relationship; and discouraging non-HUD funded providers from participating in HMIS.

HUD Response: HUD acknowledges that data collection can be burdensome, especially for programs that register large numbers of people each night. In developing the data standards, every effort was made to balance the need for obtaining basic information about users of homeless assistance services against the need to avoid disrupting the provision of services. In revising the Notice, HUD reviewed all of the universal data elements and made some adjustments in order to limit data collection as much as possible. It is important to emphasize that only the universal data elements are required for all providers reporting to the HMIS. Many homeless assistance providers are already collecting much of this information as part of their intake process and for program administration purposes, including reporting to HUD and other funding sources. Further, some of this data (name, date of birth, race, and ethnicity) does not need to be re-collected every time a client re-enters a program because this information does not change between service encounters.

A subset of the program-specific data elements is required for: (1) Programs that receive HUD McKinney-Vento Act funds and complete Annual Progress Reports (APRs); and (2) Housing Opportunities for People with AIDS (HOPWA) projects that target homeless persons and complete APRs. These data elements are consistent with the information that communities already collect and aggregate for the APRs. There will be some additional effort required as programs adjust to the HMIS-based APR that HUD will adopt in the future.

HUD has attempted to address the burden issue by providing flexibility with respect to when and how client information is obtained. As the final Notice indicates, there is no longer a requirement that program-specific data elements be collected from clients at or shortly after intake. The information can be collected during the client assessment process, taken from client records, or recorded based upon the observations of case managers.

Comment: Clarify the special provision for domestic violence programs. Some commenters stated that HUD's special provisions for domestic violence programs are inadequate because many victims seek services at mainstream homeless programs. Several commenters suggested an exemption from HMIS for any individual accessing homeless services who reports that he/she is, or has been, a victim of domestic violence.

However, some commenters disagreed with the special provision for domestic violence programs. These commenters stated that domestic violence providers may constitute a significant part of a CoC and, if they do not participate, the CoC will not be able to produce an accurate count of the homeless. The commenters were concerned that, if domestic violence victims are not included in a description of the local homeless population, it will not be possible to identify the level of resources needed to provide for their special needs.

HUD Response: HUD has carefully considered the special circumstances associated with victims of domestic violence and domestic violence programs with respect to participation in the HMIS. It is understood that unlike other special populations, victims of domestic violence could be physically at risk if individuals who intend to cause them harm are able to obtain personal information from an HMIS

with inadequate security and confidentiality protections. At the same time, domestic violence programs play an important role in many CoCs. As a number of commenters noted, their lack of participation in an HMIS means that it will not be possible to obtain an accurate unduplicated count of homeless persons in a community or adequately understand the needs of the homeless population. HUD is also aware that in some communities around the country domestic violence programs are participating in the HMIS after reaching agreement with the CoC about ways that HMIS information can be protected to ensure the safety of domestic violence clients.

After careful consideration, HUD has determined that it is essential for domestic violence providers to participate in HMIS and that technological and administrative solutions are available that will adequately protect data on victims of domestic violence. Therefore, domestic violence programs that receive HUD McKinney-Vento funding are required to participate in local HMIS and must submit client-level information to obtain an unduplicated count of homeless persons at the CoC level. CoC representatives are instructed to meet with domestic violence program staff in their communities with the goal of developing a plan for participation that includes protocols that address the concerns of domestic violence programs and ensures adequate protection of data.

Participation in HMIS can occur through a variety of arrangements, and communities are encouraged to think creatively about solutions that allow domestic violence programs to fulfill this HUD requirement. HUD will provide technical assistance to local CoCs to help them develop solutions that meet the needs of victims of domestic violence and the programs that serve this population. Given that it may take some time to negotiate protocols and agreements, HUD will permit CoCs to stage the entry of domestic violence programs last, including after the October 2004 goal for HMIS implementation. The later permissible staging of domestic violence programs into the HMIS will be taken into account in HUD's assessment of CoC progress in HMIS implementation in the national CoC competitive ranking process.

All domestic violence programs, regardless of funding, are encouraged to participate in HMIS, to ensure that critical information about domestic violence clients is available for public policy purposes.

V. Comments Regarding Universal Data Elements

Comments about the universal data standards ranged from overall statements about reducing the number of elements to detailed suggestions for revising response categories and recommendations for adding elements.

Comment: Remove some of the universal data elements to reduce the burden on providers, particularly large overnight shelters and family shelters. Several commenters indicated that the number of universal data elements should be reduced to limit the burden on shelters that serve a large number of clients every night. Some commenters stated that only the elements needed for an unduplicated count of homeless service users should be part of the required universal data elements. A few commenters suggested having two tiers of universal data elements, with a smaller number of elements for emergency shelters and the full list for other providers. Several commenters also stated that collecting all the universal data elements for each child in the family is too burdensome for providers serving large families.

On the other hand, some commenters suggested adding more detailed response categories, moving some of the program-specific data elements to universal data elements or adding new data elements.

HUD Response: In developing and reviewing the universal data standards, HUD made every effort to balance the need for requiring basic information about users of homeless services against the data collection burden for service providers and clients. All of the data elements are necessary for meeting Congress's desire for an unduplicated count of people using homeless assistance services and an analysis of the characteristics and patterns of service use of people who are homeless.

In reviewing the universal data elements, HUD identified several areas in which the Notice could be and was revised to reduce the burden of data collection for the universal data elements while still fulfilling Congressional instructions. The ''Month/Year of Last Permanent Address'' and ''Program Event Number'' data elements were dropped from the data standards due to data quality concerns and burden issues. Requirements for obtaining follow-up information when clients could only provide partial or incomplete information were eliminated for many elements. The number of required response categories was also reduced for several data elements to facilitate the intake for each client. In addition, ''Don't Know'' and ''Refused'' response categories were removed from almost every data element.

Finally, many of the comments on the burden of universal standards assumed that every universal data element would need to be collected each time a person uses a provider's services or uses any service in a community that shares data across providers. This is not required. Many of the universal data elements do not change over time (*e.g.*, SSN and birth date), so these elements only have to be collected the first time the person is served. To clarify this, we have added a column to Exhibit 1 of the final Notice, Summary of Universal Data Elements, which specifies whether the element needs to be collected the first time only or every time the person uses a service.

Comment: Universal data elements should include all information needed to determine whether a client is chronically homeless. Several commenters said that HUD's initiative to end chronic homelessness defines a chronically homeless person as someone who has a pattern of homelessness over the past year or years and is disabled. Therefore the universal data elements need to include an indicator of whether or not the client is disabled in order to measure chronic homelessness.

HUD Response: HUD agrees that the elements needed to identify chronic homeless individuals should be part of the universal data standards. A Disabling Condition data element has been added as a universal data element for this purpose. For programs that do not require this information to determine program eligibility, this data element can be obtained from assessment of a client's needs, by asking the client about their disability status, through observation, or through reviewing case management records kept by the provider. Where disability information is not required for program eligibility, homeless service providers must separate the client intake process for program admission from the collection of disability information in order to comply with Fair Housing laws and practices. Thus, unless the information is needed for eligibility determination, Disabling Condition should be collected only after the client has been admitted into the program.

Comment: Collection of full SSNs is unnecessary for obtaining unduplicated count of the homeless and may discourage clients from obtaining services. A number of commenters stated that collection of SSNs was unnecessary for obtaining an

unduplicated count of homeless service users. Some commenters suggested that a partial SSN (*e.g.*, last 5 digits) should be collected and used along with other information such as name, birth date, and gender to obtain an unduplicated count. Several of the commenters also wrote that collection of SSNs infringed on a client's privacy and would discourage clients from seeking services.

HUD Response: HUD has carefully considered comments expressing concerns about collection of SSNs, but has concluded that the benefits of collecting SSNs outweigh the burden. Some CoCs and many individual providers already collect SSNs as part of their program operations without reporting any problems. On the contrary, many programs report that collecting SSN greatly facilitates the process of identifying clients who have been previously served. Further, the Notice explicitly states that a client who does not have or refuses to provide his/her SSN cannot be denied service for this reason unless it is a statutory requirement of the program under which the service is provided.

While name and date of birth are useful identifiers, these identifiers by themselves do not produce as accurate a method for distinguishing individual homeless persons as using SSN, since names change and people share the same date of birth. Overall, the collection of SSNs greatly improves the accuracy of deduplication.

Also, an important Congressional goal is to increase the use of mainstream programs to prevent homelessness. To achieve this goal, providers need the SSN along with the other personal identifiers in order to access mainstream services for their clients.

Comment: Transgender categories should be added to the Gender data element. Several commenters recommended adding ''transgender male to female'' and transgender ''female to male'' categories to the Gender element to provide transgender clients these options for self-identification. Some commenters also wrote that it was inappropriate to specify that providers who use transgender categories should aggregate them to ''Don't Know'' for reporting purposes.

HUD Response: The final Notice allows local communities to add transgender response categories to meet their local needs, but has not made transgender response categories mandatory for the HMIS. The HMIS will be implemented by a wide variety of providers in a variety of circumstances. HUD has tried to keep mandatory reporting elements and response categories to a minimum, while allowing local communities and individual providers the flexibility to include additional response categories as appropriate for their community. However, the response categories used by local communities or individual providers must be aggregated to the required response categories for reporting purposes. For providers who add transgender categories, the responses should be aggregated to the self-identified gender of the client, for example a client who reports ''transgender male to female'' should be aggregated to the female category.

Comment: Drop the Zip Code of Last Permanent Address element because it is too difficult to collect. Some commenters stated that Zip Code of Last Permanent Address would not be a reliable element, because clients may not remember it because of their unstable living arrangements, cognitive problems, or simply because they have forgotten it. Commenters also raised concern about the burden of collecting last permanent street address for clients who could not recall their zip code. A few commenters suggested adding a response category for clients who report never having had a permanent address.

HUD Response: HUD does not agree that the zip code should be dropped. HUD recognizes that Zip Code of Last Permanent Address may be difficult for some clients to report accurately, but believes the information that is reported will be valuable for local communities to understand the geographic mobility of the homeless population and the effective catchment areas for service providers. For example, CoCs that currently collect this data element have used this information to raise awareness of homeless issues in communities that were disengaged previously from the CoC planning process.

In order to reduce data collection burden, one modification has been made to the data element. In the final Notice, programs are not required to collect the street address of clients who cannot recall their last permanent zip code.

Comment: Inserting an ''X'' for unknown digits in SSN and birth date fields is burdensome for software developers and adds extra key strokes for persons entering information. Some commenters stated that placing an ''X'' for each unknown date in the date field conflicts with many software applications, because they allow only numeric digits in the date fields. They suggested using an approximate date, such as January (*i.e.*, 01) for missing month and 01 for missing day. Some commenters also wrote that placing an ''X'' for missing digits in the SSN field adds unnecessary key strokes and will require software developers to create nine data fields instead of one for SSN.

HUD Response: HUD agrees with these suggestions. The final Notice does not require entering an ''X'' for missing SSN digits and allows for approximate dates for missing month and day where appropriate.

Comment: Do not mandate ''Don't Know'' and ''Refused'' response categories for each question. A number of commenters suggested eliminating the requirement for ''Don't Know'' and ''Refused'' response categories for each data field in the universal and program-specific standards or making them optional fields. Some commenters pointed out that, for elements with specific data formats (*e.g.*, birth date) or text fields (*e.g.*, name), a second data field would be required to capture this information. Other commenters noted that these response categories would take up excess computer screen or paper form space and require the creation of additional fields. Finally, some commenters were concerned that these categories would diminish the value of some key data elements because staff and clients would check these responses for expediency, neglecting the opportunity to collect valuable information. A few commenters expressed support for having these response options for each data element.

HUD Response: HUD agrees that requiring ''Don't Know'' and ''Refused'' response categories for every data field is an unnecessary burden. While individual providers and local communities still have the option of including these data fields, they are only required for the following elements: SSN; Veterans Status; Disabling Condition; Residency Prior to Program Entry; and Zip Code of Last Permanent Address.

VI. Comments Regarding Program-Specific Data Elements

Comment: Program-specific data elements are too burdensome. Several commenters stated that too many program-specific data elements are required. Some commenters estimated that collecting the program-specific data elements would require a significant amount of time and resources, exceeding the current capacity of most programs.

HUD Response: As discussed in the general comments section, HUD is sensitive to the burden that data collection represents to homeless assistance providers. However, a misunderstanding as to which programs are required to collect program-specific

data elements contributed to concerns about burden. Many commenters thought that all providers were required to collect the program-specific data elements in addition to the universal data elements. This is not HUD's intent. Programs that do not complete APRs are not required to collect any of the program-specific data elements.

HUD will require providers that receive HUD McKinney-Vento or HOPWA funding for homeless services and complete APRs to collect a select number of program-specific data elements. Since these data elements are necessary for APR reporting purposes, providers should be collecting much of this information already.

The standards also include optional program-specific data elements (that is, elements that are not needed to complete APRs). These optional elements were included based on discussions with other Federal agencies that administer programs for homeless persons. HUD is working with these agencies to standardize, to the maximum extent possible, the data elements and definitions used by various agencies in their reporting requests of homeless providers. The long-term goal is to make reporting easier and more consistent for homeless providers who use multiple Federal programs.

HUD recognizes that the mixing of APR-required and optional program-specific data elements contributed to concerns about burden. The final Notice discusses the two types of data elements separately. Data elements 3.1 through 3.11 are needed to complete APRs. Data elements 3.12 through 3.17 are recommended for inclusion in an HMIS because they provide important additional information about homeless persons and are needed for non-HUD funded reporting purposes.

Finally, HUD is aware that the question and answer format presented in the draft Notice contributed to concerns about burden. For each data element, the draft Notice provided a series of questions that providers would use to collect and record client information. For some APR-required data elements (*e.g.*, Income and Sources), the questions were intended to provide a step-by-step process for making (sometimes difficult) determinations about the status of a person. The final Notice does not specify the questions to be asked.

Comment: Health-related or other sensitive client information should not be collected at intake. Commenters expressed two main concerns with the collection of health-related or other sensitive data at intake. First, several commenters stated that intake staff could not be expected to properly collect some of the program-specific data elements—in particular physical or developmental disability, behavioral health status, and experience with domestic violence—since many front-line staff are not trained to make assessments about these conditions. Commenters also wrote that program staff should not collect health-related or other sensitive information at program entry, because clients often resist such inquiries when asked by people they do not know or trust. Commenters emphasized the need to build a rapport with clients throughout the assessment process to gain their trust, correctly identify their needs, and provide the appropriate service or referral.

Second, some commenters suggested that collecting health-related and other sensitive client information at intake could lead to unfair and discriminatory treatment of persons with disabilities. Some of these commenters were concerned that clients would be stigmatized or possibly denied shelter or services solely on the basis of their disability status or other health condition.

HUD Response: HUD agrees with these comments. The Notice no longer allows program staff to collect health-related information (including Physical Disability, Developmental Disability, HIV/AIDS, Mental Health, and Substance Abuse) at intake, unless this information is a statutory or regulatory eligibility requirement (*e.g.*, such as disability status for the Shelter Plus Care program or HIV status for the Housing Opportunities for Persons with AIDS program). Where disability status is not an eligibility requirement, the collection of health-related information may occur throughout the client assessment process to ensure that a client's disability status is properly recorded. The change in the timing of data collection also creates more time for providers to build a rapport with clients.

Furthermore, HUD has made it clear throughout the final Notice that homeless service providers cannot deny services to an otherwise eligible person on the basis of his/her disability or health status. In addition, the final Notice requires programs for which disability is not an eligibility criterion to collect disability-related information only after the client has been admitted into the program.

The final Notice also contains specific language in Section 4 that requires providers to post a sign at each intake desk (or comparable location) stating the reasons for collecting this information. Providers are obligated to provide reasonable accommodations for persons with disabilities throughout the data collection process. This may include, but is not limited to, providing qualified sign language interpreters, readers or materials in accessible formats such as Braille, audio, or large type, as needed by the individual with a disability.

In addition, providers that are recipients of federal financial assistance shall provide required information in languages other than English that are common in the community, if speakers of these languages are found in significant numbers and come into frequent contact with the program.

Comment: Unclear how the program-specific data elements relate to the APR. Some of the commenters suggested that HUD clarify the relationship between the APR and the HMIS data collection requirements. Many of these commenters indicated that the proposed data elements and required response categories were not consistent with APR reporting requirements, despite HUD's stated intention to use HMIS data for APR reporting in the future.

HUD Response: As discussed in the general comments section, HUD anticipates moving toward an APR based on HMIS data, and therefore has made the final Notice consistent with the current APR. The response categories for several program-specific data elements (*e.g.*, Destination and Services Received) were modified to be consistent with the APR. For example, the Destination data element contains the same places listed as response categories in the APR and asks service providers to report whether the destination is permanent or temporary and if the move involves one of HUD's housing programs. Also, a Reasons for Leaving data element was added to the program-specific data elements with response categories identical to the APR categories. Grantees that implement an HMIS in accordance with the final Notice will be able to satisfy HUD APR reporting requirements.

In addition, a cross-walk of HMIS and APR response categories is provided for both the Services Received and Destination program-specific data elements in Section 3 of this notice. The cross-walk provides guidance on how to meet APR reporting requirements using the HMIS response categories for these data elements.

As previously noted, HUD anticipates changes to the APR in the future, but not before most HUD grantees have implemented an HMIS that is compliant with this Notice. HUD will begin working with interested parties and its research and technical assistance

experts to review the current competitive SHP, Shelter Plus Care (S+C), Section 8 Moderate Rehabilitation Single Room Occupancy Program (SRO) and formula Emergency Shelter (ESG) reports in order to standardize reporting across HUD homeless programs. The changes may include provisions allowing for the electronic submission of reports.

VII. Comments Regarding Privacy/ Security and Technical Standards

Comment: Some commenters stated that the privacy standards were too demanding and impractical. Others viewed the standards as too lenient. Public comments on the privacy standards were mixed. Several commenters suggested that programs will not be able to implement many of the proposed privacy standards absent significant increases in staffing and funding. In particular, commenters said that it is unrealistic to expect front-line program staff to explain to each and every client how the information will be used and protected, and the advantages of providing accurate information.

Other commenters viewed the privacy standards as too lenient and were concerned about: Misuse of data by staff with access to the data; the lack of grievance procedures for investigating programs that violate privacy standards; the use of oral consent rather than written consent; and the impact of the standards on vulnerable populations, such as victims of domestic violence and persons with mental illness.

HUD Response: The wide range of public comments to the privacy standards underscores the diversity of providers and organizations involved in developing HMIS and the unique circumstances within programs that shape the various levels of privacy standards needed to protect clients. Providers that serve particularly vulnerable populations or those that conduct client assessments press for the highest possible privacy standards. Providers that serve large numbers of clients nightly and collect a limited amount of information or that have limited time to engage clients call for minimum standards that are less burdensome to implement. HUD clearly must be sensitive to all types of providers and design privacy standards that are sufficiently flexible to meet these dissimilar needs.

The final Notice addresses these differing needs by presenting the two-tiered privacy approach that is described in Section II of this preamble. Baseline privacy standards are required of all programs and balance the need to protect the confidentiality of client data with the practical realities of homeless service providers. Additional optional privacy protections are also presented for programs that choose to implement higher privacy standards because of the nature of their programs or service population. Although these additional privacy protections are optional, they are based on principles of fair information practices recognized by the information privacy community as appropriate for protecting personal information. Programs are encouraged to apply these additional protections as needed to provide a higher level of privacy when appropriate to meet local circumstances.

Comment: Security standards were too prescriptive. Some commenters objected to the security standards as overly prescriptive, particularly the proposed standards for passwords, workstation firewalls, and physical access. Some commenters stated that the password requirements were too complex for staff to remember, thus the requirement could prompt program staff to post their passwords in publicly accessible places, negating the security provided by the password. The requirement to install workstation firewalls was criticized by several commenters as cost prohibitive for agencies that are understaffed, especially in terms of information technology IT support, and underfunded. Some commenters indicated that the physical access provision requiring program staff to shut down a workstation when not in use was burdensome and unrealistic.

HUD Response: HUD agrees with these comments and has modified the security standards accordingly. The security standards in the final Notice follow the format of the privacy standards by presenting baseline requirements for all programs and additional security protections that communities may choose to implement to further ensure the security of their HMIS data. The baseline requirements are based on current information technology practices and rely on software applications that typically come with hardware purchased within recent years. For example: The password requirements have been simplified to meet minimum industry standards with the aim of reducing breaches in security from staff writing the passwords in publicly accessible areas; firewalls are not required on each individual workstation, so long as there is a firewall between that workstation and the outside world; and password-protected screen savers that automatically turn on are required to mitigate the burden of shutting down workstations.

Comment: Clarify how the privacy and security standards relate to the Health Insurance Portability and Accountability Act (HIPAA). Several commenters wanted HUD to clarify how the privacy and security standards for HMIS relate to the privacy and security rules for health information issued by the Department of Health and Human Services (HHS) under the authority of HIPAA. The commenters especially wanted clarification on how these standards would apply to homeless service providers that are not ''covered entities'' under HIPAA and therefore not obligated to abide by HIPAA regulations.

HUD Response: Based on input from a panel of experts (composed of homeless service providers, representatives from various federal agencies and national advocacy groups, and leading homeless researchers) and legal consultants, it is HUD's understanding that very few homeless service providers are ''covered entities'' under HIPAA. When a homeless service provider is a covered entity, the provider is required to operate in accordance with HIPAA regulations. The final Notice states that such a provider is not required to comply with the HMIS privacy or security standards. Exempting HIPAA covered entities from the HMIS privacy and security rules avoids all possible conflicts between the two sets of rules. Where a homeless service provider is not a covered entity under HIPAA, it is subject to the HMIS privacy and security standards. A provider is also subject to applicable state and local privacy laws.

Although most homeless programs are not subject to HIPAA, HUD recognizes that the HIPAA privacy rule establishes a national baseline of privacy standards for most health information. Accordingly, the HIPAA privacy rule was used as a guide for developing the HMIS privacy standards. For example, both the final Notice and HIPAA seek to assure that clients' personal information is properly protected while allowing for the flow of client information needed to provide and promote high quality services to clients. Like HIPAA, the HMIS final Notice strikes a balance between important and responsible uses of information and protecting the privacy of homeless persons who seek services. Further, both the HMIS final Notice and HIPAA are designed to recognize the unique programmatic and operational realities of a range of entities.

In several instances the HMIS baseline requirements exceed the

requirements in the HIPAA privacy rule. Where programmatic and organizational realities of certain programs (*e.g.*, programs that register a large numbers of clients daily) would make the use of HIPAA standards impractical, the privacy standards in this Notice diverge from HIPAA. Yet, in all instances, additional protocols or policies are presented that communities may choose to adopt to further ensure the privacy and confidentiality of information collected through HMIS.

Comment: Clarify disclosure provision for law enforcement purposes. Several commenters criticized the disclosure provision for law enforcement purposes as too lax and particularly inadequate in domestic violence situations. Commenters indicated a concern that some law enforcement personnel may have abused their access to databases containing sensitive personal information in the past. Furthermore, in situations involving domestic violence, commenters said that they are aware of instances where law enforcement personnel are the abusers; thus, the provision would place victims of domestic violence at risk. Most of these commenters suggested that the uses and disclosures provision for law enforcement purposes should require a court order, court ordered warrant, or a subpoena.

HUD Response: The standards pertaining to the uses and disclosures of information were based on the standards set forth in HIPAA. The general principle in HIPAA is that a covered entity is permitted, but not required, to disclose protected health information for law enforcement purposes, without an individual's authorization, for six specified purposes or situations. HIPAA allows covered entities to disclose protected health information to a law enforcement official: (1) As required by law or in compliance with court orders, subpoenas, and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official's request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death; (5) when a covered entity believes that protected health information is evidence of a crime that occurred on its premises; or (6) by a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime 45 CFR 164.512(f). HIPAA clearly allows disclosure of protected health information to law enforcement officials under several circumstances that do not involve court orders, warrants, or subpoenas.

In accordance with HIPAA standards, the final Notice adopts the general principle that all uses and disclosures are permissive and not mandatory, except for first party access to records and any required disclosures for oversight of compliance with HMIS privacy and security standards. However, HUD recognizes the particularly sensitive circumstances within certain programs and has made the following modifications to the final Notice. Among the permitted disclosures to law enforcement, this final Notice specifies that service providers may (but are not required to) disclose protected information in response to a law enforcement official's oral request for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person. In this case, the protected information is limited to name, address, date of birth, place of birth, SSN, and distinguishing physical characteristics. This provision is comparable to HIPAA. Furthermore, service providers may (but are not required to) disclose protected information for other law enforcement purposes to a law enforcement official if the law enforcement official: Makes a written request that is signed by a supervisory official of the law enforcement agency seeking the protected information; states that the information is relevant and material to a legitimate law enforcement investigation; identifies the protected information sought; is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and states that de-identified information could not be used to accomplish the purpose of the disclosure. This requirement is more restrictive than HIPAA.

Comment: Clarify HUD's intention that clients not be denied service if they refuse to supply identifying information, and how data collection may prompt some clients to feel coerced into participating in the HMIS. A few commenters were concerned that the proposed standards do not require providers to explicitly inform each client that some information requests are optional and that services cannot be denied if a client refuses to provide information. The commenters indicated that clients frequently perceive a power imbalance between themselves and housing and service providers and will consequently feel compelled to provide the requested information or risk being denied services.

HUD Response: The draft Notice stated that it is not HUD's intention that clients be denied service if they refuse to supply identifying information. HUD expects homeless service providers to attempt to collect the information specified in the final Notice for each client, but acknowledges that clients may choose not to provide information when Federal, State or local laws grant persons the right not to provide certain types of information.

HUD, other Federal agencies, State and local governments, and private funders of homeless services often require certain information to determine eligibility for housing or services or to assess needed services. This eligibility-related information is often statutory and/or regulation-based and is contained in provider agreements. Therefore, some providers are required to obtain certain information from homeless persons as a condition for receiving services. (*See* HUD's McKinney-Vento Act client-eligibility and assessment program requirements above). Exceptions to this requirement may occur in outreach programs to the street homeless or other nonresidential-based services such as soup kitchens. In such cases, an intake is often not taken, or even possible, and no information is required to access the service.

In addition, in some situations the potential dynamics within programs may prompt clients to feel coerced into supplying information. The final Notice has been modified to mitigate these circumstances. As discussed in previous sections, the methodology for collecting data was modified and programs are no longer required to collect sensitive data, particularly medical and health-related information, at program intake. The final Notice permits programs to collect much of this information during the client assessment process. By separating the data collection process from program entry, programs can build a relationship with clients and work to diminish any perceived power imbalances between provider and client.

In accordance with the baseline privacy standards specified in Section 4 of the Notice, providers are required to include a statement in their privacy notice that explains generally the reasons for collecting this information. Providers may use the following language to meet this standard: ''We collect personal information directly from you for reasons that are discussed in our privacy statement. We may be

required to collect some personal information by law, or by organizations that give us money to operate this program. Other personal information that we collect is important to run our programs, to improve services for homeless persons, and to better understand the needs of homeless persons. We only collect information that we consider to be appropriate.''

VIII. Paperwork Reduction Act

The information collection requirements in this Notice have been approved by the OMB and assigned OMB control numbers 2506–0145, 2106–0112, 2506–0133 and 2506–0117, respectively. In accordance with the Paperwork Reduction Act of 1995 U.S.C. (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

1. Introduction to the Notice

This Notice sets forth the results of the Department's deliberative process to develop national data and technical standards for locally administered Homeless Management Information Systems (HMIS). An HMIS is a computerized data collection application designed to capture client-level information over time on the characteristics and service needs of homeless persons. HMIS is being used increasingly by communities across the country to improve the delivery of service to homeless persons and to obtain better information about their needs. Today's advanced HMIS applications offer homeless assistance providers the opportunity to collect information about client needs, service usage, and service outcomes. They also permit provider staff to access timely resource and referral information and to manage operations.

This Notice is divided into five parts. This Introduction describes the benefits of an HMIS for homeless persons, local homeless assistance providers, local bodies that plan for and coordinate homeless services (most frequently known as Continuums of Care [CoC] [1]), and policy makers at the local and national levels. It also describes the statutory authority that allows HUD to prescribe HMIS data and technical standards and provides an overview of the standards and related requirements.

The next two parts of the Notice set forth the HMIS data standards. Section 2 presents the Universal data elements that HUD has determined must be collected from all clients receiving homeless assistance services. Section 3 presents Program-specific data elements that are to be collected from clients served by certain types of programs. Recommended data collection steps, required response categories, and suggested question wording are provided for each universal and program-specific data element, and, when appropriate, there is a discussion of special issues. Section 4 of the Notice describes the HMIS privacy and security standards for data confidentiality and security that apply to an HMIS and programs that collect, use, or process HMIS data. Finally, Section 5 addresses Technical standards for the creation of HMIS data systems.

This Notice is being published following a public comment period (July 22, 2003, to September 22, 2003) during which CoC planning bodies, homeless service providers, local and State governments, advocates, professional associations, homeless clients, and the general public had an opportunity to review and comment on the proposed standards.

1.1. The Benefits of a Local HMIS

The development of a local HMIS is about: (1) Bringing the power of computer technology to the day-to-day operations of individual homeless assistance providers; (2) knitting together providers within a local community in a more coordinated and effective housing and service delivery system for the benefit of homeless clients; and (3) obtaining and reporting critical aggregate information about the characteristics and needs of homeless persons.

An HMIS provides significant opportunities to improve access to, and delivery of, housing and services for people experiencing homelessness. An HMIS can accurately describe the scope of homelessness and the effectiveness of efforts to ameliorate it. An HMIS can strengthen community planning and resource allocation.

1.1.1. Benefits to Homeless Clients and Homeless Assistance Providers

An HMIS offers many specific benefits to homeless persons seeking assistance and the organizations that provide assistance. An HMIS offers front-line program staff tools for providing more effective client services through improved referrals, case management, and service coordination. If programs choose to share data about clients and services, program staff will be able to retrieve records of clients previously served, thereby streamlining the intake process. An HMIS reduces the frequency with which clients are required to complete intake forms and assessments. Homeless clients benefit directly from these service improvements as well as from the providers' improved ability to understand the needs of homeless persons and their use of homeless assistance resources.

1.1.2. Policy Makers and Planners

Local policy makers, planners and advocates can use aggregated HMIS data to demonstrate the size and characteristics of the homeless population in their communities and improve their understanding of service usage patterns by that population. HMIS data can also be used to identify and address service delivery gaps within the CoC and improve planners ability to link clients to mainstream programs that are essential to the prevention of homelessness and to sustaining formerly homeless people in permanent housing. Compared to other commonly used methods for gathering information on homeless persons, notably point-in-time census counts, HMIS allows local CoCs to obtain significantly better point-in-time and longitudinal data about homeless persons in their communities.

In addition, HMIS helps national policy makers and advocates to more effectively address homelessness. Congress has charged HUD with producing an Annual Homeless Assessment Report (AHAR) based on HMIS data. To carry out that responsibility, HUD has developed a representative sample of 80 jurisdictions and is helping those jurisdictions develop their HMIS, collect good quality data, and conduct analysis to support unduplicated counts of homeless service users and their characteristics at the local level. Analysis of HMIS data from the 80-jurisdiction sample will form the core of the AHAR and will enable Congress and HUD to better understand the needs of homeless persons and target Federal resources accordingly.

HUD also has responsibility for funding and monitoring several McKinney-Vento Act programs (42 U.S.C. 11301 *et seq.*). Individual programs authorized under the McKinney-Vento Act require the assessment of homeless needs, the provision of services to address those needs, and the reporting of outcomes of Federal assistance in helping homeless people to become more independent. HMIS will make it possible for HUD to request—and grantees to more quickly generate—information for Annual Progress Reports (APRs) that will enable

[1] The term Continuum of Care or CoC is used throughout the remainder of this notice to refer to the entities that are typically responsible for developing and managing the local HMIS.

HUD to report program results to Congress and the American public as required by the Government Performance Results Act and to meet its administrative and program responsibilities.

1.2. Statutory Authority

1.2.1. Direction to HUD on Homeless Management Information Systems

Over the past several years, Congress has expressed its concern for better local and national information about homeless persons through numerous conference and committee reports. Most recently, the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, approved January 23, 2004) Conference Report (H.R. 108–401) stated: ''The conferees reiterate the direction and reporting requirement included in the Senate Report regarding the collection and analysis of data to assess the effectiveness of the homeless system.''

Senate Report 108–143 stated:

The Committee remains supportive of the Department's ongoing work on data collection and analysis within the homeless program. HUD should continue its collaborative efforts with local jurisdictions to collect an array of data on homelessness in order to analyze patterns of use of assistance, including how people enter and exit the homeless assistance system, and to assess the effectiveness of the homeless assistance system. The Committee directs HUD to take the lead in working with communities toward this end, and to analyze jurisdictional data. The Committee directs HUD to report on the progress of this data collection and analysis effort by no later than March 12, 2004.

The Consolidated Appropriations Resolution of 2003 (Pub. L. 108–7, approved February 20, 2003) Conference Report (H.R. Report 108–10) provided guidance on obtaining data on the chronically homeless and support for HMIS data collection:

The conferees are concerned that the Department is not taking the proper steps to determine the extent to which HUD's homeless assistance programs are meeting the needs of chronically homeless people. Therefore, HUD is directed to begin collecting data on the percentage and number of beds and supportive services programs that are serving people who are chronically disabled and/or chronically homeless.

The conferees reiterate the direction and reporting requirement included in the Senate report regarding the collection and analysis of data to assess the effectiveness of the homeless system, and direct that such report also include HUD's timeline for finalizing data requirements for the Homeless Management Information Systems.

Senate Report 107–222 stated:

The Committee remains supportive of the Department's ongoing work on data collection and analysis within the homeless program. HUD should continue its collaborative efforts with local jurisdictions to collect an array of data on homelessness in order to analyze patterns of use of assistance, including how people enter and exit the homeless assistance system, and to assess the effectiveness of the homeless assistance system. The Committee directs HUD to take the lead in working with communities toward this end, and to analyze jurisdictional data within one year. The Committee directs HUD to report on the progress of this data collection and analysis effort by no later than May 13, 2003.

The Congress previously discussed the need for better data on homelessness in the Conference Report (H.R. Report 106–988) for Fiscal Year (FY) 2001 HUD Appropriations Act (Pub. L. 106–377, approved October 27, 2000). It stated:

The conferees reiterate and endorse language included in the Senate report regarding the need for data and analysis on the extent of homelessness and the effectiveness of McKinney Act programs * * * The conferees concur with the importance of developing unduplicated counts of the homeless at the local level, as well as taking whatever steps are possible to draw inferences from this data about the extent and nature of homelessness in the nation as a whole.

Likewise, the conferees agree that local jurisdictions should be collecting an array of data on homelessness in order to prevent duplicate counting of homeless persons, and to analyze their patterns of use of assistance, including how they enter and exit the homeless assistance system and the effectiveness of the systems. HUD is directed to take the lead in working with communities toward this end, and to analyze jurisdictional data within three years. Implementation and operation of Management Information Systems (MIS), and collection and analysis of MIS data, have been made eligible uses of Supportive Housing Program funds. The conferees direct HUD to report to the Committees within six months after the date of enactment of this Act on its strategy for achieving this goal, including details on financing, implementation, and maintaining the effort.

Congress directed HUD to take the lead in requiring every jurisdiction to have unduplicated client-level data within three years. The reasons for the emphasis and the specific directives on encouraging these systems were articulated in FY 2001 Senate Report 106–410:

The Committee believes that HUD must collect data on the extent of homelessness in America as well as the effectiveness of the McKinney homeless assistance programs in addressing this condition. These programs have been in existence for some 15 years and there has never been an overall review or comprehensive analysis on the extent of homelessness or how to address it. The Committee believes that it is essential to develop an unduplicated count of homeless people, and an analysis of their patterns of use of assistance (HUD McKinney homeless assistance as well as other assistance both targeted and not targeted to homeless people), including how they enter and exit the homeless assistance system and the effectiveness of assistance.

In the FY 1999 HUD Appropriations Act, Congress directed HUD to collect data from a representative sample of existing local HMIS. Specifically, House Report 105–610 stated that HUD should:

Collect, at a minimum, the following data: the unduplicated count of clients served; client characteristics such as age, race, disability status, units [days] and type of housing received (shelter, transitional, permanent); and services rendered. Outcome information such as housing stability, income, and health status should be collected as well.

In the FY 2001 HUD appropriations process, Senate Report 106–410 directed HUD to build on its earlier preliminary work with communities with an advanced HMIS and continue assessing data from these communities:

To continue on an annual basis to provide a report on a nationally representative sample of jurisdictions whose local MIS data can be aggregated yearly to document the change in demographics of homelessness, demand for homeless assistance, to identify patterns in utilization of assistance, and to demonstrate the effectiveness of assistance.

The Committee instructs HUD to use these funds to contract with experienced academic institutions to analyze data and report to the agency, jurisdictions, providers, and the Committee on findings.

1.2.2. Direction to HUD and Other Federal Agencies on Homeless Data Collection

In addition to Congressional direction relating to HMIS, HUD, other Federal agencies and the Interagency Council on the Homeless are required under various statutory authorities and Congressional direction to collect information about the nature and extent of homelessness. Individual programs authorized under the McKinney-Vento Act require the assessment of homeless needs, the provision of services to address those needs, and reporting on the outcomes of federal assistance in helping homeless people to become more independent. The major Congressional imperatives in HUD's McKinney-Vento Act programs are:

- Assessing the service needs of homeless persons;
- Ensuring that services are directed to meeting those needs;
- Assessing the outcomes of the services in nurturing efforts by homeless

persons to become more self-sufficient; and

• Reporting to Congress on the characteristics and effectiveness of Federal efforts to address homelessness.

Both individually and as a whole, these provisions provide statutory imperatives for collecting comprehensive data on homeless individuals and their needs. This section progresses from the most general of the statutory authorities to the most specific programmatic authorities.

Interagency Council on the Homeless. The McKinney-Vento Homeless Assistance Act directs the Interagency Council on the Homeless (ICH) to undertake a number of tasks on interagency coordination, evaluation, and reporting that mandate the collection and dissemination of information on homeless individuals and their needs:

(a) Duties.

The Council shall—

(1) Review all Federal activities and programs to assist homeless individuals;

(2) Take such actions as may be necessary to reduce duplication among programs and activities by Federal agencies to assist homeless individuals;

(3) Monitor, evaluate, and recommend improvements in programs and activities to assist homeless individuals conducted by Federal agencies, State and local governments, and private voluntary organizations;

* * * * *

(5) Collect and disseminate information relating to homeless individuals;

(6) Prepare the annual reports required in subsection (c)(2) of this section;

(Section 203(a), McKinney-Vento Homeless Assistance Act).

Each Federal agency is required to report to the ICH: A description of each program to assist homeless individuals and the number of homeless individuals served by the program; impediments to use of the program by homeless individuals; and efforts by the agency to increase homeless assistance services. The ICH, in turn, is required to submit an annual report to the President and Congress that:

(A) Assesses the nature and extent of the problems relating to homelessness and the needs of homeless individuals;

(B) Provides a comprehensive and detailed description of the activities and accomplishments of the Federal Government in resolving the problems and meeting the needs assessed pursuant to subparagraph (A);

(Section 203(a), McKinney-Vento Homeless Assistance Act)

In the following excerpt from the 2001 Senate Report on the HUD Appropriations Act, at page 53, Congress further directed the revitalized ICH to assess how mainstream programs can prevent homelessness.

The committee also recognizes that homelessness cannot be ended by homeless assistance providers alone—it requires the involvement of a range of Federal programs. Accordingly it has included $500,000 for the staffing of the Interagency Council on the Homeless. It instructs the Council specifically to require HUD, HHS, Labor, and VA to quantify the number of their program participants who become homeless, to address ways in which mainstream programs can prevent homelessness among those they serve, and to describe specifically how they provide assistance to people who are homeless* * *

Comprehensive Housing Affordability Strategy/Consolidated Plan. Every jurisdiction that receives funding from certain HUD programs (HOME, Community Development Block Grant, Housing Opportunities for Persons with AIDS, Emergency Shelter Grants) must submit a comprehensive housing strategy that includes a Consolidated Plan section dealing with homeless needs and an analysis of impediments to fair housing choice. Every jurisdiction is required to:

Describe the nature and extent of homelessness, including rural homelessness, within the jurisdiction, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness, including tabular presentation of such information; and a description of the jurisdiction's strategy for (A) helping low-income families avoid becoming homeless; (B) addressing the emergency shelter and transitional housing needs of homeless persons (including a brief inventory of facilities and services that meet such needs within that jurisdiction); and (C) helping homeless persons make the transition to permanent housing and independent living. (Section 105(a)(2), Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*)

The implementing regulations and administrative directions detail how the 50 states, Puerto Rico, the U.S. territories and over 1000 metropolitan cities and urban counties present narratives and data tables on homeless needs, current services, and the plans to address and prevent homelessness.

HUD'S McKinney-Vento Act Program Requirements. The McKinney-Vento Act contains a consistent philosophy and an accompanying set of statutory mandates concerning the framework for assessing homeless needs and addressing them with appropriate services. The McKinney-Vento Act also recognizes the importance of ensuring confidentiality in recordkeeping and public disclosure of information concerning homeless persons seeking domestic violence shelter and services. In addition, all of HUD's McKinney-Vento Act assistance must be consistent with the local jurisdiction's Consolidated Plan.

Emergency Shelter Grant (ESG) Program. Each governmental and nonprofit recipient of ESG funds is required to certify to HUD that it will undertake certain responsibilities regarding the provision of services, including that:

* * * * *

(3) It will assist homeless individuals in obtaining—

(A) Appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(B) Other Federal, State, local, and private assistance available for such individuals;

* * * * *

(5) It will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under this subtitle and that the address or location of any family violence shelter project assisted under this subtitle will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(6) Activities undertaken by the recipient with assistance under this subtitle are consistent with any housing strategy submitted by the grantee in accordance with Section 105 of the Cranston-Gonzalez National Affordable Housing Act (Sections 415(c)(3), (5) and (6), McKinney-Vento Homeless Assistance Act).

Supportive Housing Program. The Supportive Housing Program (SHP) funds transitional and permanent supportive housing and supportive services only projects that require grant recipients to collect specific information from clients concerning their qualification for services, their service needs, and progress toward assisting clients to independent living. HUD requires projects to report on the number and characteristics of clients served and their outcomes.

The statute provides that:

(a) IN GENERAL—To the extent practicable, each project shall provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants.

(b) REQUIREMENTS—Supportive services provided in connection with a project shall address the special needs of individuals (such as homeless persons with disabilities and homeless families with children) intended to be served by a project (Section 425(a) and (b), McKinney-Vento Homeless Assistance Act).

The McKinney-Vento Act requires every project in the Supportive Housing

Program to conduct an on-going assessment of client needs for services and their availability for the client. This information is necessary to assess the progress of the project in moving clients to independent living and to report to HUD. In addition, special protections on confidentiality of recordkeeping involving persons provided domestic violence services are specified.

Section 426 of the McKinney-Vento Homeless Assistance Act provides that—

(c) REQUIRED AGREEMENTS—The Secretary may not provide assistance for any project under this subtitle unless the applicant agrees—

(1) To operate the proposed project in accordance with the provisions of this subtitle;

(2) To conduct an ongoing assessment of the supportive services required by homeless individuals served by the project and the availability of such services to such individuals;

(3) To provide such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of supportive services to the residents and users of the project;

(4) To monitor and report to the Secretary on the progress of the project;

(5) To develop and implement procedures to ensure (A) the confidentiality of records pertaining to any individual provided family violence prevention or treatment services through any project assisted through this subtitle, and (B) that the address or location of any family violence shelter project assisted under this subtitle will not be made public, except with written authorization of the person or persons responsible for the operation of such project;

* * * * *

(7) To comply with such other terms and conditions as the Secretary may establish to carry out this subtitle in an effective and efficient manner.

Shelter Plus Care (S+C) Program. The Shelter Plus Care (S+C) Program funds tenant-, sponsor-, and project-based rental assistance and rental assistance in connection with moderate rehabilitation for single-room occupancy units in conjunction with supportive services funded from other sources for homeless persons with disabilities. Specific information is required to establish both the initial disability status of the client to enter the program and to ensure that appropriate supportive services are provided during the full term of the program to address the needs of the client and to meet the match requirement of the program.

* * * * *

Section 454(b) of the McKinney-Vento Homeless Assistance Act provides in part that:

(b) MINIMUM CONTENTS—The Secretary shall require that an application identify the need for the assistance in the community to be served and shall contain at a minimum—

* * * * *

(2) A description of the size and characteristics of the population of eligible persons;

* * * * *

(4) The identity of the proposed service provider or providers;

(5) A description of the supportive services that the applicant proposes to assure will be available for eligible persons;

(6) A description of the resources that are expected to be made available to provide the supportive services required by section 453;

(7) A description of the mechanisms for developing a housing and supportive services plan for each person and for monitoring each person's progress in meeting that plan * * *

The McKinney-Vento Act also requires recipients to provide for ongoing client assessments and provision of needed services. Section 456 states that the Secretary may not approve assistance under this subtitle unless the applicant agrees

(1) To operate the proposed program in accordance with the provisions of this subtitle;

(2) To conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;

(3) To assure the adequate provision of supportive services to the participants in the program.

1.3. Development of Systems and Software

With Congressional support, HUD has been encouraging local CoCs to implement HMIS. Since 2001, the implementation of HMIS has been a fundable activity for CoCs under the Supportive Housing program, and since 2002, making progress towards implementing an HMIS has been part of HUD's review of the CoC applications.

Before implementation of an HMIS became a federal initiative, some communities had already developed sophisticated client-level information systems based on the technology of the time. Some of these were management systems for large local government programs (*e.g.*, New York, Philadelphia). Others linked decentralized service providers around a centralized bed-registry (*e.g.*, St. Louis) or an information and referral system. The success of these pioneering data management systems has prompted an increasing number of CoCs to develop similar systems to meet the needs of their clients and participating service providers. Software companies are developing specialized systems capable of documenting client demographic data, storing information on clients needs and on case management or treatment plans, identifying available services and tracking referrals, and monitoring service provision, progress, outcomes, and follow-up.

Reflecting experiences at both local and national levels to develop and test first-generation HMIS software, today's most advanced HMIS software combines a number of functions to enhance individual service provider operations and to link providers together into a broader CoC data system. These functions include:

Client Profile: Client demographic data obtained at intake and exit.

Client Assessment: Information on clients' needs and goals, as well as case management or treatment plans.

Service Outcomes: Client-level data on services provided, progress, outcomes, and follow-up.

Information and Referral/Resource Directories: Timely data on the network of available services within the Continuum to determine eligibility and provide referrals. Some systems provide documentation and tracking of a referral from one provider to the next and messaging capability.

Operations: Operational functionality that permits staff to manage day-to-day activities, including bed availability, and incident reporting.

Accounting: Traditional accounting tools and special components to record service activity/expenditures against specific grants. Some systems have donor and fundraising elements.

Thus, HMIS software provides local providers and agencies not only with comprehensive information on the nature of homelessness in their communities, but also with the ability to generate reports on their internal operations and for various funders. Because each participating provider agrees to share certain information with the HMIS central server, it also offers the capacity to generate reports on the operations of the CoC system as a whole.

One of HUD's major goals in this HMIS initiative is to help individual homeless service providers access the very best computer technology to assist them in their day-to-day operations and to help increase the effective coordination of services in the CoC. To this end, HUD has developed several publications to assist local jurisdictions including: *Homeless Management Information System Consumer Guide: A Review of Available HMIS Solutions,* January 2003; and *Homeless Management Information Systems: Implementation Guide,* September 2002. These guides can be found at: *http://www.hud.gov/offices/cpd/homeless/hmis/guide*. HUD is also preparing a

guide on local uses of HMIS data that will be available on HUD's Web site following the publication of this Notice in 2004.

1.4. Overview of Data Standards, Definitions, and Collection Requirements

1.4.1. Universal Data Elements

Data to be collected by all HMIS are those essential to the administration of local homeless assistance programs and to obtaining an accurate picture of the extent, characteristics and the patterns of service use of the local homeless population. These data elements are critical to meeting the Congressional requirement for HMIS. Therefore, all providers participating in a local HMIS will be required to collect the universal data elements from all homeless clients seeking housing or services, including date of birth, race, ethnicity, gender, veteran's status and Social Security Number (SSN). Standards for notification about the purposes of data collection, non-disclosure, and protection of this and other data elements are discussed in Section 4 of this Notice.

In addition to personal identifying information, the universal data elements include information on a client's demographic characteristics and recent residential history in order to enable local providers and communities to analyze patterns of homelessness and service use. Among other important uses, these data will enable CoCs to identify the chronically homeless. Section 2 of this Notice provides more detail on the data standards for the universal data elements.

1.4.2. Program-Specific Data Elements

Program-specific data elements are needed to assess the operations and outcomes of programs that provide services to homeless clients. HUD, other Federal agencies, State and local governments, and private funders of homeless services often require certain information to assess services, to determine eligibility for housing or services provided by particular programs, and to monitor service provision and outcomes for clients. This eligibility-related information is often statutory and/or regulation-based and is contained in provider agreements. Therefore, some providers are required to obtain certain information from homeless persons as a condition for receiving services. (*See* HUD's McKinney-Vento Act client-eligibility and assessment program requirements above).

Program-specific data elements should be collected from all clients served by programs that are required to report this information to HUD or other organizations. For programs with no such reporting requirement, these standards are recommended to allow data across all local programs to be easily analyzed. For programs that receive funding through HUD's SHP, S+C Program, and Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings (SRO) Program, as well as HOPWA-funded homeless programs, most program-specific data elements are required to complete APRs. Exceptions to this requirement may occur in outreach programs to the street homeless or other nonresidential-based services such as soup kitchens. In such cases, an intake is often not taken, or even possible, and no information is required to access the service.

Data elements required to assess operations and outcomes of programs include private or sensitive information on topics such as income, physical disabilities, behavioral health status, and whether the client is currently at risk of domestic violence. As described in Section 4, CoCs will have to establish firm policies and procedures to protect against unauthorized disclosure of personal information. Section 3 of this Notice provides more detail on the standards for program-specific data elements.

1.4.3. Data Collection and Reporting

As will be discussed further in Sections 2 and 3, the data standards establish uniform definitions for the types of information to be collected but not uniform protocols for how the data are to be collected. With some exceptions, the data need not be collected at a standard point in time during intake, assessment, or provision of services, as programs differ in the ways in which these functions are performed. The intent is not to add the administration of a survey questionnaire to other program activities, but rather to ensure that information with standardized meaning is entered into the HMIS.

Providers will be required to report the client-level data specified in this Notice on a regular basis to a central data storage facility in order to make it possible for the CoC to eliminate duplicate records and analyze the data for local planning purposes. The CoC will be responsible for aggregating the data and preparing an unduplicated local count of homeless persons and a description of their characteristics and patterns of service use. The CoC must retain the data for a period of seven years, adhering to the security provisions set forth in Section 4 of this Notice. An HMIS should have the ability to record client data from a limitless number of service transactions for longitudinal data analysis and assessment of client outcomes (often referred to as a ''transactional'' or ''relational'' database structure). The maintanence of historical data is discussed in Section 5 of this Notice.

1.4.4. Additional HMIS Data Elements

Particular programs (or the entire local CoC) may wish to collect assessment, service tracking, and outcome information in more detail than required by the uniform HMIS standards. For example, with regard to behavioral health, a program may wish to capture significantly more information about a client's psychiatric history or current status than is specified under the program-specific data elements. Such elective data elements are developed at the discretion of each CoC.

Just as is the case for the universal data elements and program-specific data elements, the collection of additional data within the HMIS is subject to privacy and fair housing laws and practices.

1.5. Other HMIS Provisions

1.5.1. Participation Requirements for Providers Receiving HUD McKinney-Vento Act Funding

Given the benefits of an HMIS for providing accurate estimates of the homeless population and its needs and improving housing and service provision at the local level, all recipients of HUD McKinney-Vento Act program funds are expected to participate in an HMIS. The HUD McKinney-Vento Act programs include ESG, SHP, S+C, and Section 8 Moderate Rehabilitation for SRO. In the FY 2003 funding notices for the SHP, S+C, and Section 8 Moderate Rehabilitation for SRO programs, HUD announced that providing data to an HMIS is a condition of funding for grantees.

The annual CoC application requires information about a CoC's progress in developing and implementing its HMIS. This information is used to rank CoCs in order to determine annual program funding. The application questions will be more detailed in the future to make possible an accurate determination of the extent of coverage and stage of implementation of each HMIS.

1.5.2. Participation Requirements for HOPWA-Funded Homeless Projects

Projects that receive HOPWA funding and target homeless persons are

required to participate in HMIS. Such projects involve efforts to: provide outreach and assess the needs of persons with HIV/AIDS who are homeless; provide housing and related supportive services; and conduct project evaluation activities for this sub-population. HOPWA projects that assist persons who are homeless but do not target this sub-population are not required to participate in HMIS. However, such projects are encouraged to consider the benefits of an HMIS in coordinating assistance for clients and in reporting to funders. HOPWA projects that target homeless persons are required to integrate efforts within their Continuum of Care, including the use of the HMIS.

As noted in Section 3 (data element 3.5: HIV/AIDS), the HMIS standards will require the collection of information on a client's HIV/AIDS status. Such information is covered by confidentiality requirements. As in other areas involving sensitive or protected client information, information should be recorded only when a program or project has adequate data confidentiality protections. These protections include agency policies and procedures and staff training to ensure that HIV-related information cannot be learned by anyone without the proper authorization.

1.5.3. Annual Progress Reports

Recipients of funds under the SHP, S+C, Section 8 SRO and HOPWA Programs are required to submit APRs to HUD. The Notice provides guidance for how to use HMIS data in submitting the current version of the APR. Homeless shelter and service providers receiving funds under the Emergency Shelter Grant (ESG) program are required to participate in an HMIS if the provider is located in a jurisdiction covered by a CoC with an HMIS. Entitlement communities and states are not required to set up an HMIS for homeless providers receiving ESG funds in jurisdictions not covered by a CoC HMIS.

HUD intends at some point to use an APR driven by HMIS data to measure the performance of both McKinney-Vento Act program grantees and CoCs more generally. Prior to implementation of performance-based measures, performance indicators would be developed through a process of consultation with homeless service providers. Performance indicators would need to be carefully designed to include appropriate adjustments for the characteristics of the population served by a CoC and individual providers and the nature of the services provided. CoCs and software developers would be given sufficient time to adopt enhancements to their systems to accommodate new outcome indicators.

1.5.4. Sharing HMIS Data Among Providers Within a CoC

While local providers will be required to report client-level data to a CoC's central data storage facility on a regular basis, sharing of HMIS data among providers within the CoC is not required by HUD and is at the discretion of each CoC and its providers. In communities where data are shared, providers may choose to share all of the information that is collected about clients or limit that information to a small number of data elements. Where there is limited data sharing, providers should allow access to at least the clients' names, SSNs, and birthdates in order to prevent the creation of duplicate client records within the CoC. HUD encourages data sharing among providers within a Continuum of Care as sharing of HMIS information allows maximum benefits from such systems. From an operational perspective, it improves the ability of service provider staff to coordinate and deliver services to homeless clients. (Section 2 discusses how communities can obtain an unduplicated count of homeless persons when data are not shared.)

1.5.5. Access To HMIS Data Outside the Local Continuum of Care

The HMIS initiative is not a federal effort to track homeless people and their identifying information beyond the local level. HUD has no plans to develop a national client-level database with personal identifiers of homeless service users, having concluded that such an endeavor would create serious impediments to provider participation in local HMIS.

To produce the AHAR, HUD will request aggregated data produced by local HMIS analysts responsible for the 80 jurisdictions in the AHAR sample as well as self-selected non-sample jurisdictions that have a high proportion of homeless assistance providers contributing data to their local HMIS. The aggregated data will represent an unduplicated count of client records at the CoC level. There will be no use of protected personal identifiers to de-duplicate records across CoCs.

Any research on the nature and patterns of homelessness that uses client-level HMIS data will take place only on the basis of specific agreements between researchers and the entity that administers the HMIS. These agreements must reflect adequate standards for the protection of confidentiality of data and must comply with the disclosure provisions in Section 4 of this final Notice. For example, such agreements will be necessary if any of the jurisdictions included in the AHAR sample choose to report client-level data to the organizations conducting the AHAR analysis for HUD rather than reporting aggregated data. Under no circumstances will any identifiers be shared with the Federal Government under these special arrangements. For more information on the AHAR research project, see HUD's Web site at *http://www.hud.gov/offices/cpd/homeless/hmis/standards/hmisfaq.pdf*.

1.5.6. Special Provisions for Domestic Violence Shelters

Domestic violence shelters and other programs that assist victims of domestic violence play an important role in many CoCs and have received significant funding through local Continuums. Victims of domestic violence are also served in many general purpose programs funded by HUD. HUD is aware of, and is sensitive to, the data confidentiality and security concerns that many domestic violence programs have with respect to their participation in a local HMIS.

At the same time, HUD recognizes that HMIS can provide valuable data concerning domestic violence victims' needs, and localities have been able to greatly improve their service delivery to this vulnerable population. In communities across the country, domestic violence programs are already providing data to local HMIS. The key to participation hinges on the availability of sophisticated HMIS software that addresses data security issues and the development of protocols within programs for data security, confidentiality, and sharing that satisfy the concerns of domestic violence programs.

After careful review, HUD has determined that it will require domestic violence programs that receive HUD McKinney-Vento funds to participate in local HMIS. HUD expects domestic violence programs that receive HUD McKinney-Vento funds to implement the universal and, where applicable, program-specific data elements described in this final Notice. Adopting these standards is essential if domestic violence programs are to comply with HUD reporting requirements. CoC representatives are instructed to meet with domestic violence program staff in their communities with the goal of developing procedures and protocols that will provide the necessary safeguards for victims of domestic

violence and address the concerns of domestic violence programs. All HMIS data is subject to the privacy and security standards set forth in Section 4 of this Notice.

HUD is prepared to provide extensive technical assistance to communities to develop the best possible solutions for domestic violence victims and providers. Given that it may take additional time to reach agreement in communities where domestic violence programs do not presently provide data, HUD will permit CoCs to stage the entry of domestic violence programs last, including after the October 2004 goal for HMIS implementation. The later staging of entry into the HMIS by domestic violence programs will be taken into account in HUD's assessment of CoC progress in HMIS implementation in the national CoC competitive ranking process.

1.6. Staging of Local HMIS Implementation

HUD recognizes that developing and implementing an HMIS is a difficult and time-consuming process and must necessarily be done in stages. It is expected that all CoCs will make progress toward meeting the Congressional direction for implementation of HMIS by October 2004. As shown in the chart, a CoC's first priority is to bring on board emergency shelters, transitional housing programs, and outreach programs. Providers of emergency shelter, transitional housing, and homeless outreach services should be included in the HMIS as early as possible, regardless of whether they receive funding through the McKinney-Vento Act or from other sources.

As a second priority, HUD encourages CoCs to actively recruit providers of permanent supportive housing funded by HUD McKinney-Vento Act programs and other HUD programs. As a third priority, CoCs should recruit homelessness prevention programs, Supportive Services Only programs funded through HUD's Supportive Housing Program, and non-federally funded permanent housing programs.

Other Federal agencies that fund McKinney-Vento Act programs have their own data collection and reporting requirements. Key Federal agency representatives were invited and participated in consideration of the proposed HMIS data elements for this Notice. HUD continues to work with those agencies to maximize standardization of McKinney-Vento Act reporting requirements and to broaden adoption of HMIS-based data.

Efforts to recruit providers into the HMIS will require local HMIS designers to make trade-offs between the desirability of including as many homeless service providers as early as possible and the feasibility of obtaining high quality data. At the same time, given the benefits of HMIS to clients, service providers, and the larger CoC system, a high degree of coverage is both desirable and advantageous.

Priority Participation[1] in HMIS

By Program Type

			Residential			
		Outreach To Street	Emergency	Transitional	Permanent Supportive Housing	Homeless Prevention
McKinney Vento HUD Programs	SHP[2]	1	1	1	2	NA
	S+C	NA	NA	NA	2	NA
	Section 8 SRO	NA	NA	NA	2	NA
	ESG	NA	1	1	NA	3
Other HUD Programs that Fund Homeless Activities	HOPWA	1	1	1	2	3
	Community Development Block Grants	1	1	1	NA	NA
	HOME	NA	NA	1	2	NA
Other Federal Programs	Emergency Food and Shelter (FEMA)	NA	1	1	NA	3
	Runaway and Homeless Youth (HHS)	1	1	1	NA	NA
	Projects for Assistance in Transition from Homelessness (PATH)(HHS)	1	1	1	NA	NA
	Traditional Living for Homeless Youth (HHS)	NA	NA	1	NA	NA
	Family Violence Prevention and Services (HHS)	1	1	1	NA	NA
	Health Center Grants for Homeless Persons (Health Care for the Homeless)(HHS)	1	NA	NA	NA	NA
	Violence Against Women Grants (DOJ)	1	1	1	NA	NA
	VA Homeless Providers Grants and Per Diem	1	1	1	NA	NA
Non-Federally Funded Service Providers	For example, programs operated by faith-based and community based organizations that take no federal funds	1	1	1	3	3

[1] The Department expects that communities will set priorities for HMIS participation by beginning with activities designated as "1", then "2" and finally "3."

[2] Supportive Service Only programs funded under SHP are designated as "3" priority for HMIS participation.

2. Data Standards For Universal Data Elements

The universal data elements should be collected by all agencies serving homeless persons. HUD carefully weighed the reporting burden of the universal data elements against the importance of the information for producing meaningful local and Federal reports. Of special concern to HUD was the reporting burden for programs that register large numbers of applicants on a daily basis, with little time to collect information from each applicant. As a result, the number of universal data elements was kept to a minimum, and the ease of providing the information requested and whether or not many homeless service providers were already collecting such information was considered for each element.

The universal data standards will make possible unduplicated estimates of the number of homeless people accessing services from homeless providers, basic demographic characteristics of people who are homeless, and their patterns of service use. The universal data standards will also allow measurement of the number and share of chronically homeless people who use homeless services. The standards will enable generation of information on shelter stays and homelessness episodes over time. The universal data elements are:

2.1: Name
2.2: Social Security Number
2.3: Date of Birth
2.4: Ethnicity and Race
2.5: Gender
2.6: Veteran Status
2.7: Disabling Condition
2.8: Residence Prior to Program Entry
2.9: Zip Code of Last Permanent Address
2.10: Program Entry Date
2.11: Program Exit Date
2.12: Unique Person Identification Number
2.13: Program Identification Number
2.14: Household Identification Number

Data elements 2.1 through 2.9 require that staff from a homeless assistance agency enter information provided by a client into the HMIS database. Data elements 2.1 to 2.5 only need to be collected the first time a client uses a program offered by a provider or, within a CoC that shares local HMIS data, uses a program offered by any provider in that community. If some of this information is not collected the first time a client accesses services or is inaccurate, it may be added or corrected on subsequent visits. Data elements 2.6 to 2.9 may need to be collected in subsequent visits as this information can change over time. However, the new information that changes over time should be captured without overwriting the information collected previously.

The next two elements, 2.10 and 2.11, are entered by staff (or computer-generated) every time a client enters or leaves a program. Elements 2.12 to 2.14 are automatically generated by the data collection software, although staff inquiries are essential for the proper generation of these elements. Data elements 2.13 and 2.14 need to be generated for each program entry. Exhibit 1 at the end of this section summarizes the above information for each universal data element.

There are no mandated questions for obtaining the required information, although recommended questions are provided in Exhibit 2 at the end of this section. Providers have the flexibility to tailor data collection questions and procedures to their circumstances as long as the information is accurately and consistently collected given the response categories and definitions provided. As discussed in Section 4, HUD requires that clients be notified of the purpose for which the information is being collected and the ways in which the client may benefit from providing the information.

The response categories are required and the HMIS application must include the exact response categories that are presented in this section. For each data element, a definition indicating the type of information to be collected and the response categories are shown separately. Exhibit 3, at the end of this section, summarizes the required response categories for all the universal data elements. Section 5 of this Notice, Technical Standards, discusses approaches for handling missing response categories throughout the HMIS application.

All universal data elements must be obtained from each adult and unaccompanied youth who applies for a homeless assistance service. Most universal data elements are also required of children under age 18 in a household. Where a group of persons apply for services together (as a household or family), information about any children under the age of 18 in the household can be provided by the household head who is applying for services. The children do not need to be present at the time the household head applies for services. However, information should not be recorded for children under age 18 if it is indicated that these children will not be entering the program on the same day as the household head. Information for these children should be recorded when the children join the program. Information on any other adults (18 years of age or older) who are applying for services as part of the household will be obtained directly from that adult. Generally, one adult should not provide information for another adult.

All identifying information, including data elements 2.1 (Name), 2.2 (SSN), 2.3 (Date of Birth), 2.9 (Zip Code of Last Permanent Address), 2.10 Program Entry Date, 2.11 (Program Exit Date), 2.12 (Unique Person Identification Number), and 2.13 (Program Identification Number) need to have special protections to ensure the data are unusable by casual viewers. HMIS user access to this information will be highly restricted in accordance with Section 4 of this Notice.

2.1. Name

Rationale: The first, middle, last names, and suffix should be collected to support the unique identification of each person served.

Data Source: Client interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All clients.

Definition and Instructions: Four fields should be created in the HMIS database to capture the client's full first, middle, and last names and any suffixes (*e.g.*, John David Doe, Jr.). Try to obtain legal names only and avoid aliases or nicknames. Section 5 of this Notice discusses how to treat missing information for open-ended questions.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.1. Name	Response categories			
Current name	First name	Middle name	Last name	Suffix.
Other Name Used to Receive Services previously.	First name	Middle name	Last name	Suffix.

UNIVERSAL DATA ELEMENT—Continued

2.1. Name	Response categories			
Example	John	David	Doe	Jr.

Special Issues: This data element should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Part 4 of this Notice.

2.2. Social Security Number

Rationale: The collection of a client's Social Security Number (SSN) and other personal identifying information is required for two important reasons. First, unique identifiers are key to producing an accurate, unduplicated local count of homeless persons accessing services covered by HMIS. This is particularly critical in jurisdictions where homeless assistance providers do not share data at the local level and are, therefore, unable to use a Personal Identification Number to de-duplicate (at intake) across all the programs participating in the CoC's HMIS (*see* data element 2.12 for more information). Where data are not shared, CoCs must rely on a set of unique identifiers to produce an unduplicated count once the data are sent to the CoC or central server. Name and date of birth are useful unique identifiers, but these identifiers by themselves do not facilitate as accurate an unduplicated count of homeless persons as using SSN since names change and people share the same date of birth. Where data are shared across programs, SSN greatly improves the process of identifying clients who have been previously served and allows programs to de-duplicate upon program entry.

Second, an important Congressional goal is to increase the use of mainstream programs by homeless persons. To achieve this goal, homeless service providers need the SSN along with the other personal identifiers in order to access mainstream services for their clients.

Data Source: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All clients.

Definitions and Instructions: In one field, record the nine-digit Social Security Number. In another field, record the appropriate SSN data quality code.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.2 Social security number	Response categories
Social Security number	_____/____/_____ (example: 123 45 6789)
SSN data quality code	1 = Full SSN reported. 2 = Partial SSN reported. 8 = Don't know or don't have SSN. 9 = Refused.

Special Issues: Although the HMIS application's data entry form may include hyphens or back slashes within the SSN to improve readability, one alphanumeric field without hyphens should be created within the HMIS database. Ideally, if only a partial SSN is recorded, the database should fill in the missing numbers with blanks so that the provided numbers are saved in the correct place of the Social Security Number. (For example, if only the last four digits of the SSN, ''123456789'' are given, it should be stored as '' 6789'' and if only the first three digits are provided, it should be stored as ''123 ''.) This will allow maximum matching ability for partial SSNs.

Under Federal law (5 U.S.C. 552a), a government agency cannot deny shelter or services to clients who refuse to provide their SSN, unless the requirement was in effect before 1975 or SSN is a statutory requirement for receiving services from the program. This data element should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Section 4 of this Notice.

2.3. Date of Birth

Rationale: The date of birth can be used to calculate the age of persons served at time of program entry or at any point in receiving services. It will also support the unique identification of each person served.

Data Source: Client interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All clients.

Definitions and Instructions: Collect the month, day, and year of birth for every person served. If a client cannot remember the year of birth, ask the person's age and calculate the approximate year of birth. If a client cannot remember the month or day of birth, communities may record an approximate date of ''01'' for month and ''01'' for day since this approximation is a best practice among data users. Communities that already have a policy of entering another approximate date may continue this policy. Approximate dates for month and day will allow calculation of a person's age within one year of their actual age.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.3 Date of birth	Response categories
____/____/_____ (*e.g.*, 08/31/1965). (Month) (Day) (Year)	

Special Issues: One date-format field for birth dates should be created in the HMIS database. This data element should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Section 4 of this Notice.

2.4. Ethnicity/Race

Rationale: Ethnicity and race are used to count the number of homeless persons who identify themselves as Hispanic or Latino and to count the number of homeless persons who identify themselves within five different racial categories. In the October 30, 1997 issue of the **Federal Register** (62 FR 58782), the Office of Management and Budget (OMB) published ''Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.'' All existing Federal recordkeeping and report requirements must be in compliance with these Standards as of January 1, 2003. The data standards in this Notice follow the OMB guidelines and can be used to complete HUD form 27061.

Data Source: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All clients.

Definitions and Instructions: In separate data fields, collect both the self-identified Hispanic or Latino ethnicity and the self-identified race of each client served. Allow clients to identify multiple racial categories. Staff observations should not be used to collect information on ethnicity and race.

2.4.1. Ethnicity

The definition of Hispanic or Latino ethnicity is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture of origin, regardless of race.

2.4.2. Race

Definitions of each of the race categories are as follows:

1.—*American Indian or Alaska Native* is a person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment.

2.—*Asian* is a person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

3.—*Black or African American* is a person having origins in any of the black racial groups of Africa. Terms such as ''Haitian'' or ''Negro'' can be used in addition to ''Black or African American.''

4—*Native Hawaiian or Other Pacific Islander* is a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

5—*White* is a person having origins in any of the original peoples of Europe, the Middle East or North Africa.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.4—Ethnicity and race	Response categories
Ethnicity	0 = Non-Hispanic/Latino. 1 = Hispanic/Latino.
Race	1 = American Indian or Alaska Native. 2 = Asian. 3 = Black or African-American. 4 = Native Hawaiian or Other Pacific Islander 5 = White

2.5. Gender

Rationale: To create separate counts of homeless men and homeless women served.

Data Source: Interview, observation, or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All clients.

Data definitions and instructions: Record the gender of each client served.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.5 Gender	Response categories
	0 = Female. 1 = Male.

Special Issues: Programs may add ''transgender male to female'' and ''transgender female to male'' categories as needed. However, for reporting purposes these categories are to be aggregated to the ''male'' or ''female'' categories based on the client's self-perceived sexual identity.

2.6. Veteran Status

Rationale: To determine the number of homeless veterans.

Data Source: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults served.

Definition and Instructions: A veteran is someone who has served on active duty in the Armed Forces of the United States. This does not include inactive military reserves or the National Guard unless the person was called up to active duty.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.6 Veteran status	Response categories
	0 = No. 1 = Yes. 8 = Don't Know. 9 = Refused.

2.7. Disabling Condition

Rationale: Disability condition is needed to help identify clients meeting HUD's definition of chronically homeless and, depending on the source of program funds, may be required to establish client eligibility to be served by the program.

Data Source: Client interview, self-administered form, observation, or assessment. Where disability is a statutory or regulatory eligibility criteria, the data source is the evidence required by the funding source.

When Data are Collected: At any time after the client has been admitted into the program.

Subjects: All adults served.

Definition and Instructions: For this data element, a disabling condition means: (1) A disability as defined in Section 223 of the Social Security Act; (2) a physical, mental, or emotional impairment which is (a) expected to be of long-continued and indefinite duration, (b) substantially impedes an individual's ability to live independently, and (c) of such a nature that such ability could be improved by more suitable housing conditions; (3) a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act; (4) the disease of acquired immunodeficiency syndrome or any conditions arising from the etiological agency for acquired immunodeficiency syndrome; or (5) a diagnosable substance abuse disorder.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.7 Disabling condition	Response categories
	0 = No. 1 = Yes. 8 = Don't Know. 9 = Refused.

Special Issues: Homeless service providers must separate the client intake process for program admission from the collection of disability information in order to comply with Fair Housing laws and practices, unless this information is required to determine program eligibility.

For the purposes of defining an adult that meets HUD's definition of chronically homeless, programs should use the Disabling Condition data element along with: Date of Birth (to determine that the person is 18 years of age or older); Household Identification Number (to identify unaccompanied individuals); and Residence Prior to Program Entry or prior information on Program Entry and Program Exit dates (to determine the number of episodes of homelessness and length of time a person is homeless).

2.8 Residence Prior to Program Entry

Rationale: To identify the type of residence and length of stay at that residence just prior to program admission.

Data Source: Interview or self-administered form.

When Data Are Collected: At any time after the client has been admitted into the program.

Subjects: All adults and unaccompanied youth served.

Definition and Instructions: In separate fields, determine the type of living arrangement the night before entry into the program and the length of time the client spent in that living arrangement.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.8 Residence prior to program entry	Response category
Type of Residence	1 = Emergency shelter (including a youth shelter, or hotel, motel, or campground paid for with emergency shelter voucher). 2 = Transitional housing for homeless persons (including homeless youth). 3 = Permanent housing for formerly homeless persons (such as SHP, S+C, or SRO Mod Rehab). 4 = Psychiatric hospital or other psychiatric facility. 5 = Substance abuse treatment facility or detox center. 6 = Hospital (non-psychiatric). 7 = Jail, prison or juvenile detention facility. 10 = Room, apartment, or house that you rent. 11 = Apartment or house that you own. 12 = Staying or living in a family member's room, apartment, or house. 13 = Staying or living in a friend's room, apartment, or house. 14 = Hotel or motel paid for without emergency shelter voucher. 15 = Foster care home or foster care group home. 16 = Place not meant for habitation (*e.g.,* a vehicle, an abandoned building, bus/train/subway station/airport or anywhere outside). 17 = Other. 8 = Don't Know. 9 = Refused.
Length of Stay in Previous Place	1 = One week or less. 2 = More than one week, but less than one month. 3 = One to three months. 4 = More than three months, but less than one year. 5 = One year or longer.

Special Issues: For APR reporting purposes, programs should use the following coding approach to conform with the response categories in the current APR:

CROSS-WALK OF HMIS AND APR RESPONSE CATEGORIES FOR RESIDENCE PRIOR TO PROGRAM ENTRY

Response categories in the final notice	Corresponding response categories in the current APR
1 = Emergency shelter	b = Emergency Shelter.
2 = Transitional housing for homeless persons	c = Transitional housing for homeless persons.
3 = Permanent housing for formerly homeless persons	k = Other.
4 = Psychiatric hospital or other psychiatric facility*	d = Psychiatric facility.
5 = Substance abuse treatment facility or detox center*	e = Substance abuse treatment facility.
6 = Hospital (non-psychiatric)*	f = Hospital.
7 = Jail, prison or juvenile detention facility*	g = Jail/prison.
8 = Don't Know	k = Other.
9 = Refused	k = Other.
10 = Room, apartment, or house that you rent	j = Rental housing.
11 = Apartment or house that you own	k = Other.
12 = Staying or living in a family member's room, apartment, or house	i = Living with relatives/friends.
13 = Staying or living in a friend's room, apartment, or house	i = Living with relatives/friends.
14 = Hotel or motel paid for without emergency shelter voucher	k = Other.
15 = Foster care home or foster care group home	k = Other.
16= Place not meant for habitation	a = Non-housing.
17 = Other	k = Other.

In addition, for response categories marked with an asterisk (*), if the client came from one of these institutions but was there for less than 30 days and was living in an emergency shelter or in a place not meant for habitation prior to entry, the client should be counted for APR reporting purposes in either the ''emergency shelter'' or ''place not meant for habitation'' categories, as appropriate.

This standard does not preclude the collection of residential history information beyond the residence experienced the night prior to program admission.

2.9 Zip Code of Last Permanent Address

Rationale: To identify the former geographic location of persons experiencing homelessness.

Data Source: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults and unaccompanied youth.

Definition and Instructions: In one field, record the five-digit zip code of the apartment, room, or house where the client last lived for 90 days or more. In another field, record the appropriate Zip data quality code.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.9 Zip code of last permanent residence	Response categories
Zip Code	_ _ _ _ _ (*e.g.*, 12345)
Zip Data Quality Code	1 = Full Zip Code Recorded. 8 = Don't Know. 9 = Refused.

Special Issues: This data element should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Section 4 of this Notice.

2.10 Program Entry Date

Rationale: To determine the length of stay in a homeless residential program or the amount of time spent participating in a services-only program.

Data Source: Recorded by the staff responsible for registering program entrants.

When Data Are Collected: Upon any program entry (whether or not it is an initial program entry).

Subjects: All clients.

Definition and Instructions: Record the month, day, and year of first day of service of program entry. For a shelter visit, this date would represent the first day of residence in a shelter program following residence outside of the shelter or in another program. For services, this date may represent the day of program enrollment, the day a service was provided, or the first date of a period of continuous participation in a service (*e.g.*, daily, weekly or monthly).

There should be a new program entry date (and corresponding program exit date) for each period/episode of service. Therefore, any return to a program after a break in treatment, completion of the program, or termination of the program by the user or provider must be recorded as a new program entry date. A definition of what constitutes a break in the treatment depends on the program and needs to be defined by program staff. For example, programs that expect to see the same client on a daily (or almost daily) basis may define a break in treatment as one missed day that was not arranged in advance or three consecutive missed days for any reason. Treatment programs that are scheduled less frequently than a daily basis may define a break in treatment as one or more missed weekly sessions.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.10 Program entry date	Response categories
	_ _ /_ _ /_ _ _ _ (example: 01/30/2004. (Month) (Day) (Year).

Special Issues: This data element should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Section 4 of this Notice.

2.11 Program Exit Date

Rationale: To determine the length of stay in a homeless residential program or the amount of time spent participating in a services-only program.

Data Source: Recorded by the staff responsible for monitoring program utilization or conducting exit interviews.

When Data Are Collected: Upon any program exit.

Subjects: All clients.

Definition and Instructions: Record the month, day and year of last day of service. For a program providing housing or shelter to a client, this date would represent the last day of residence in the program's housing before the client transfers to another residential program or leaves the shelter. For example, if a person checked into an overnight shelter on January 30, 2004, stayed over night and left in the morning, the last date of service for that shelter stay would be January 31, 2004. To minimize staff and client burden at shelters that require most (or all) clients to reapply for service on a nightly basis, the provider can enter the entry and exit date at the same time or can specify software that automatically enters the exit date as the day after the entry date for clients of the overnight program.

For services, the exit date may represent the last day a service was provided or the last date of a period of continuous service. For example, if a person has been receiving weekly counseling as part of an ongoing treatment program and either formally terminates his or her involvement or fails to return for counseling, the last date of service is the date of the last counseling session. If a client uses a service for just one day (*i.e.*, starts and stops before midnight of same day, such as an outreach encounter), the entry and exit date would be the same date.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.11 Program exit date	Response categories
	_ _ /_ _ /_ _ _ _ (example: 01/30/2004. (Month) (Day) (Year).

Special Issues: This data element should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Section 4 of this Notice.

2.12 Unique Person Identification Number

Rationale: Every client receiving homeless assistance services within a CoC is assigned a Personal Identification Number (PIN), which is a permanent and unique number generated by the HMIS application. The PIN is used to obtain an unduplicated count of persons served within a CoC. The PIN is the only identifier that is guaranteed to be present and unique for each client served. A client may not have or may not know their SSN, while other identifying information such as name may be the same as another client's.

Data Source: Where data are shared across programs in a CoC, staff will determine at intake whether a client has been assigned a PIN previously by any of the participating programs. To make this determination, the staff enters personal identifying information (Name,

SSN, Date of Birth, and Gender) into the HMIS application. The application then searches a CoC's centralized database for matching records. If a match is found and a PIN is retrieved, the same PIN will be assigned to the client. If no matches are found, a new randomly generated PIN is assigned to the client.

Where data are not shared across programs, staff will similarly determine at intake whether a client has been assigned a PIN previously by their agency or program. If the client is found within their program records, the same PIN will be assigned to the client. If the client has not been served by their program previously, a PIN is randomly generated and assigned to the client. The PIN will allow programs to produce an unduplicated count of clients served by their program. Programs will provide client-level information on a regular basis to the CoC system administrators who are responsible for producing a CoC-wide unduplicated count.

When Data Are Collected: Upon program entry.

Subjects: All clients.

Definition and Instructions: Assign a unique ID number to each client served. The PIN is a number automatically generated by the HMIS application (see Section 5 of this Notice). The PIN will not be based on any client-specific information, but instead should be a randomly, computer-generated number.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.12 Personal Identification Number	Response categories
	A PIN must be created, but there is no required format as long as there is a single unique PIN for every client served in the CoC and it contains no personally identifying information.

Special Issues: This data standard should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Section 4 of this Notice.

2.13 Program Identification Information

Rationale: Program identification information will indicate the geographic location of a program, its facility and CoC affiliation, and whether the program is a street outreach, emergency shelter, transitional housing, permanent supportive housing, homeless prevention, services-only or other type of program.

Data Source: Selected by staff from a list of programs available within a particular agency or the CoC. Upon selection of a program from the list, the HMIS application will assign the program identification information to every program event for each client.

When Data Are Collected: Upon any program entry (whether or not it is an initial program entry).

Subjects: All clients.

Definition and Instructions: The program identification information consists of four components that identifies the geographic location of a program Federal Information Processing Standards (FIPS code), its facility and CoC affiliation, and whether it is a street outreach, emergency shelter, transitional housing, permanent supportive housing, homeless prevention, services-only or other type of program. For each client, staff will only need to select the name of the program servicing the client. Staff will not need to view or have access to the actual program identification number. For some providers with only one program for all clients, the HMIS application can be specified to automatically generate the Program Identification Information. For more information on the components of this data element, see Section 5 of this Notice.

Required Response Categories:

UNIVERSAL DATA ELEMENT

	Response categories
2.13 Program Identification Information.	
Federal Information Processing Standards (FIPS Code).	10-digit FIPS code identifying geographic location of provider (*see* Part 5 of Notice for instructions on how to obtain FIPS code).
Facility Code	Identification code for facility where services provided (Locally Determined).
Continuum of Care Code.	HUD-Assigned.

UNIVERSAL DATA ELEMENT—Continued

	Response categories
Program Type Code.	1 = Emergency shelter (*e.g.*, facility or vouchers) 2 = Transitional housing 3=Permanent supportive housing 3 = Permanent supportive housing 4 = Street outreach 5 = Homeless prevention (*e.g.*, security deposit or one month's rent) 6 = Services only type of program 7 = Other

Special Issues: The FIPS code, facility code, CoC code, and program type code should be stored as separate fields in the database. This data element should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Section 4 of this Notice.

2.14 Household Identification Number

Rationale: To count the number of households served.

Data Source: Interview or staff observation that a client is participating in a program with other members of a household.

When Data Are Collected: Upon any program entry (whether or not it is an initial program entry) or as soon as possible thereafter.

Subjects: All clients.

Required Response Categories:

UNIVERSAL DATA ELEMENT

2.14 Household identification number	Response categories
	A Household ID number must be created, but there is no required format as long as the number allows identification of clients that receive services as a household.

Special Issues: A household is a group of persons who together apply for homeless assistance services. If it is not evident to program staff whether or not the others are applying for assistance with the client, then program staff should ask if anyone else is applying for assistance with the client.

Persons can join a household with members who have already begun a program or leave a program although other members of the household remain in the program. A common household identification number should be assigned to each member of the same

household. Individuals in a household (adults and/or children) who are not present when the household initially applies for assistance and later join the household should be assigned the same household identification number that links them to the rest of the persons in the household. For example, a child may be in school when the adult applies for assistance, but will be part of the household receiving assistance from the program right from the start. Or, a child may be in foster care at the time service is initiated, but may rejoin the household to receive services several weeks later. See Section 5 of this Notice for more information on this data element.

EXHIBIT 1: SUMMARY OF UNIVERSAL DATA ELEMENTS

Data standards	Subjects	Protected personal information	Data entry or computer generated	Collect at initial or every service event
2.1 Name	All Clients	Protected	Data Entry	Initial Only.[1]
2.2 Social Security Number	All Clients	Protected	Data Entry	Initial Only.[1]
2.3 Date of Birth	All Clients	Protected	Data Entry	Initial Only.[1]
2.4 Ethnicity and Race	All Clients		Data Entry	Initial Only.
2.5 Gender	All Clients		Data Entry	Initial Only.
2.6 Veteran Status	Adults		Data Entry	Every Time.
2.7 Disabling Condition	Adults		Data Entry	Every Time.
2.8 Residence Prior to Program Entry	Adults and Unaccompanied Youth.		Data Entry	Every Time.
2.9 Zip Code of Last Permanent Address	Adults and Unaccompanied Youth.	Protected	Data Entry	Every Time.
2.10 Program Entry Date	All Clients	Protected	Data Entry	Every Time.
2.11 Program Exit Date	All Clients	Protected	Data Entry	Every Time.
2.12 Unique Personal Identification Number	All Clients	Protected	Computer-Generated	Initial Only.
2.13 Program Identification Number	All Clients	Protected	Computer-Generated	Every Time.
2.14 Household Identifier Number	All Clients		Computer-Generated	Every Time.

[1] Note that one or more of these personal identifiers may need to be asked on subsequent visits to find and retrieve the client's record. However, this information only needs to be recorded on the initial visit.

EXHIBIT 2: RECOMMENDED QUESTIONS FOR UNIVERSAL DATA ELEMENTS

2.1 Name

Q: "What is your first, middle, and last name, and suffix?" (*legal names only; avoid aliases or nicknames*)

2.2 Social Security Number (SSN)

Q: "What is your Social Security Number?"

2.3 Date of Birth

Q: "What is your birth date?"

If complete birth date is not known:
Q: "What is your age?"

2.4 Ethnicity and Race

Q: "Are you Hispanic or Latino?"
Q: "What is your race (you may name more than one race)?"

2.5 Gender

Q: "Are you male or female?

2.6 Veteran Status

Q: "Have you ever served on active duty in the Armed Forces of the United States?"

2.7 Disabling Condition

Q: "Do you have a physical, mental, emotional or developmental disability, HIV/AIDS, or a diagnosable substance abuse problem that is expected to be of long duration and substantially limits your ability to live on your own?"

2.8 Residence Prior to Program Entrance

Q: "Where did you stay last night?"
Q: "How long did you stay at that place?"

2.9 Zip Code of Last Permanent Residence

Q: "What is the zip code of the apartment, room, or house where you last lived for 90 days or more?"

EXHIBIT 2: RECOMMENDED QUESTIONS FOR UNIVERSAL DATA ELEMENTS—Continued

2.10 Program Entry Date
No question needed.
2.11 Program Exit Date
No question needed.
2.12 Personal Identification Number (PIN)
To facilitate the search for an existing PIN, may want to ask: Q: "Have your ever been served by this [name of facility or program] before?"
2.13 Program Identification Number
No question needed.
2.14 Household Identification Number
If it is not evident that others are applying for or receiving assistance with the client, then may want to ask: Q: "Is there someone else who is applying for (or receiving) assistance with you?" If yes, Q: "What is their first, middle, and last name?" (*legal names only; avoid aliases and nicknames*) Q: "Do you have any children under 18 years of age with you?" If yes, Q: "What is (are) the first, middle, and last name(s) of the child(ren) with you?"

EXHIBIT 3: REQUIRED RESPONSE CATEGORIES FOR UNIVERSAL DATA ELEMENTS

2.1 Name	Response Categories			
Current Name	First Name	Middle Name	Last Name	Suffix
Other Name Used to Receive Services Previously	First Name	Middle Name	Last Name	Suffix
Example	John	David	Doe	Jr.

2.2 Social security number	Response categories
Social security number	___,__,____ (example: 123 45 6789)
SSN data quality code	1 = Full SSN Reported 2 = Partial SSN Reported 8 = Don't Know or Don't Have SSN 9 = Refused
2.3 Date of birth	Response categories
	_____/____/____ (*e.g.,* 08/31/1965) (Month) (Day) (Year)
2.4 Ethnicity and race	Response categories
Ethnicity	0 = non-Hispanic/Latino 1 = Hispanic/Latino
Race	1 = American Indian or Alaska Native 2 = Asian 3 = Black or African-American 4 = Native Hawaiian or Other Pacific Islander 5 = White
2.5 Gender	Response categories
	0 = Female 1 = Male
2.6 Veteran status	Response categories
	0 = No 1 = Yes 8 = Don't Know 9 = Refused
2.7 Disabling condition	Response categories
	0 = No 1 = Yes 8 = Don't Know 9 = Refused
2.8 Residence prior to program entry.	Response category
Type of residence	1 = Emergency shelter (including a youth shelter, or hotel, motel, or campground paid for with emergency shelter voucher)

	2 = Transitional housing for homeless persons (including homeless youth) 3 = Permanent housing for formerly homeless persons (such as SHP, S+C, or SRO Mod Rehab) 4 = Psychiatric hospital or other psychiatric facility 5 = Substance abuse treatment facility or detox center 6 = Hospital (non-psychiatric) 7 = Jail, prison or juvenile detention facility 10 = Room, apartment, or house that you rent 11 = Apartment or house that you own 12 = Staying or living in a family member's room, apartment, or house 13 = Staying or living in a friend's room, apartment, or house 14 = Hotel or motel paid for without emergency shelter voucher 15 = Foster care home or foster care group home 16 = Place not meant for habitation (*e.g.,* a vehicle, an abandoned building, bus/train/subway station/airport or anywhere outside) 17 = Other 8 = Don't Know 9 = Refused
Length of stay in previous place.	1 = One week or less 2 = More than one week, but less than one month 3 = One to three months 4 = More than three months, but less than one year 5 = One year or longer
2.9 Zip code of last permanent residence.	Response categories
Zip code	_ _ _ _ _ (*e.g.,* 12345)
Zip data quality code	1 = Full Zip Code Recorded 8 = Don't Know 9 = Refused
2.10 Program entry date	Response categories
	__/__/__ (example: 01/30/2004) (Month) (Day) (Year)
2.11 Program exit date	Response categories
	__/__/__ (example: 01/31/2004) (Month) (Day) (Year)
2.12 Personal identification number.	Response categories
	A PIN must be created, but there is no required format as long as there is a single unique PIN for every client served in the CoC and it contains no personally identifying information.
2.13 Program identification information.	Response categories
Federal information processing standards (FIPS code).	10-digit FIPS code identifying geographic location of provider (see Part 5 of Notice for instructions on how to obtain FIPS code).
Facility code	Identification code for facility where services provided (Locally Determined)
Continuum of care code	HUD-Assigned
Program type code	1 = Emergency shelter (*e.g.,* facility or vouchers) 2 = Transitional housing 3 = Permanent supportive housing 4 = Street outreach 5 = Homeless prevention (*e.g.,* security deposit or one month's rent) 6 = Services only type of program 7 = Other
2.14 Household identification number.	Response categories
	A Household ID number must be created, but there is no required format as long as the number allows identification of clients that receive services as a household.

3. Program-Specific Data Elements

Program-specific data elements must be collected from all clients served by programs that are required to report this information to HUD and other organizations. For programs with no such reporting requirements, these standards are optional but recommended since they allow local CoCs to obtain consistent information across a range of providers that can be used to plan service delivery, monitor the provision of services, and identify client outcomes. These data elements, however, do not constitute a client assessment tool, and providers will need to develop their own data collection protocols in order to properly assess a client's need for services. For programs that receive funding through HUD's Supportive Housing Program, Shelter Plus Care, Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings (SRO) Program,

and the homeless programs funded through Housing Opportunities for Persons with AIDS (HOPWA), most program-specific data elements are required to complete Annual Progress Reports (APRs).

The program-specific data elements that are required for HUD's current APR reporting include:

3.1: Income and Sources
3.2: Non-Cash Benefits
3.3: Physical Disability
3.4: Developmental Disability
3.5: HIV/AIDS
3.6: Mental Health
3.7: Substance Abuse
3.8: Domestic Violence
3.9: Services Received
3.10: Destination
3.11: Reasons for Leaving

In addition to these data elements that are required for APR reporting, additional program-specific data elements are recommended by a team of HMIS practitioners, federal agency representatives, and researchers. These data elements are based on best practices that are currently being implemented at the local level. In addition, HUD is working to bring together federal agencies that fund McKinney-Vento programs in an effort to standardize the data elements and definitions used by these agencies in their reporting requirements. This effort to standardize data definitions and standards across federal agencies will make reporting easier and more consistent for homeless providers who use multiple federal funding sources. Some of these data elements may be added to HUD APRs in the future. They include:

3.12: Employment
3.13: Education
3.14: General Health Status
3.15: Pregnancy Status
3.16: Veteran's Information
3.17: Children's Education

A summary of the program-specific data elements is provided at the end of this section (see Exhibit 4).

All of the program-specific data elements require that staff from a homeless assistance agency enter information into the HMIS database. This information may be:

- Provided by the client (in the course of client assessment and, for some data elements, at program exit);
- Taken from case manager interviews or records; and/or
- Observed by program staff.

Information should be collected separately from each adult and unaccompanied youth. In the case of a household or family that is receiving services together, information should be obtained and recorded for each adult and child in the household. However, for current APR reporting purposes, programs should continue to report only on participants defined by HUD as single persons and adults in families, excluding children or caregivers who live with the adults, who receive assistance during the operating year.

If the source of information is a client interview, staff are encouraged to use the questions that are provided in Exhibit 5 ''Recommended Questions for Program-Specific Data Elements'' at the end of this section. HUD requires that clients be notified as to why the information is being collected and the ways in which clients may benefit from providing the information. Programs that collect this information should be prepared to help the person, to the extent practicable, either by directly providing services or providing a referral, and programs should provide adequate data confidentiality protections, including adequate training of staff, to ensure that this information remains confidential. As discussed in Section 4 of this Notice, local CoCs must establish firm policies and procedures to protect against unauthorized disclosure of, or misuse of, personal information.

For each program-specific data element, multiple response categories are provided. For APR-required data elements, the response categories and associated codes are required and the HMIS application must include these responses and codes exactly as they are presented in this section. The response categories and corresponding codes for each data element are summarized at the end of this section (see Exhibit 6). Section 5 of this Notice discusses the technical standards for handling specific types of response categories and codes (*e.g.*, missing values and ''other'' response categories) throughout the HMIS application.

Finally, many of these data elements represent transactions or information that may change over time. The CoC should decide which program-specific data elements to update in cases where clients already have records in the HMIS and return to the program following a previous service episode.

3.1 Income and Sources

Rationale: Income and sources of income are important for determining service needs of people at the time of program entry, determining whether they are accessing all income sources for which they are eligible, and describing the characteristics of the homeless population. Capturing the amount of cash income from various sources will help to: assure all income sources are counted in the calculation of total income; enable program staff to take into account the composition of income in determining needs; determine if people are receiving the mainstream program benefits to which they may be entitled; help clients apply for benefits assistance; and allow analysis of changes in the composition of income between entry and exit from the program.

Data Source: Client interview, self-administered form, and/or case manager records.

When Data Are Collected: In the course of client assessment and at program exit. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All clients served.

Definition and Instructions: In separate fields, determine (a) whether the client received income from each source listed below in the past 30 days, (b) the amount of income received from each source identified by the client, and (c) the client's total monthly income (rounded to the nearest U.S. dollar). Allow clients to identify multiple sources of income.

Required Response Categories:

PROGRAM—SPECIFIC DATA ELEMENT

3.1 Income and source	Response category	
Source and amount of income	Source of income	Amount from source $
	1 = Earned Income	_ _ _ _.00
	2 = Unemployment Insurance	_ _ _ _.00
	3 = Supplemental Security Income or SSI	_ _ _ _.00
	4 = Social Security Disability Income (SSDI)	_ _ _ _.00

PROGRAM—SPECIFIC DATA ELEMENT—Continued

3.1 Income and source	Response category	
Source and amount of income	Source of income	Amount from source $
	5 = A veteran's disability payment	_ _ _ _.00
	6 = Private disability insurance	_ _ _ _.00
	7 = Worker's compensation	_ _ _ _.00
	8 = Temporary Assistance for Needy Families (TANF) (or use local program name).	_ _ _ _.00
	9 = General Assistance (GA) (or use local program name)	_ _ _ _.00
	10 = Retirement income from Social Security	_ _ _ _.00
	11 = Veteran's pension	_ _ _ _.00
	12 = Pension from a former job	_ _ _ _.00
	13 = Child support	_ _ _ _.00
	14 = Alimony or other spousal support	_ _ _ _.00
	15 = Other source	_ _ _ _.00
	16 = No financial resources	
Total monthly income		$_ _ _ _.00

Special Issues: For APR reporting purposes, the total monthly income should include only the income for participants as defined by HUD and should not include income associated with children or caregivers who live with the adults assisted. The income associated with children or caregivers who live with the adults assisted should be recorded separately as part of their individual client record.

Programs may choose to disaggregate the sources of income into more detailed categories as long as these categories can be aggregated into the above stated sources of income.

3.2 Non-Cash Benefits

Rationale: Non-cash benefits are important to determine whether people are accessing all mainstream program benefits for which they may be eligible and to ascertain a more complete picture of their situation.

Data Source: Client interview, self-administered form, and/or case manager records.

When Data Are Collected: In the course of client assessment and at program exit. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults and unaccompanied youth served by the program.

Definition and Instructions: For each source listed below, determine if the client received any of the non-cash benefits in the past month (30 days). Allow clients to identify multiple sources of non-cash benefits.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.2 Source of non-cash benefit	Response category
	1 = Food stamps or money for food on a benefits card
	2 = MEDICAID health insurance program (or use local name)
	3 = MEDICARE health insurance program (or use local name)
	4 = State Children's Health Insurance Program (or use local name)
	5 = Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
	6 = Veteran's Administration (VA) Medical Services
	7 = TANF Child Care services (or use local name)
	8 = TANF transportation services (or use local name)
	9 = Other TANF-funded services (or use local name)
	10 = Section 8, public housing, or other rental assistance
	11 = Other source

Special Issues: Programs may choose to disaggregate the non-cash sources of income into more detailed categories as long as these categories can be aggregated into the above-stated non-cash sources of income. Programs may also choose to record additional information about non-cash sources of income, including: information related to benefit eligibility (*e.g.*, if a person is not receiving a service, is it because they are not eligible or eligibility has not yet been determined); amount of benefits; and start and stop dates for receipt of benefits.

3.3 Physical Disability

Rationale: To count the number of physically disabled persons served by homeless programs, determine eligibility for disability benefits, and assess their need for services.

Data Source: Client interview, self-administered form, and/or case manager records.

When Data Are Collected: In the course of client assessment once the individual is admitted, unless this information is needed prior to admission to determine program eligibility. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All clients served.

Definition and Instructions: Determine if the client has a physical disability, meaning a physical impairment which is (a) expected to be of long-continued and indefinite duration, (b) substantially impedes an individual's ability to live independently, and (c) of such a nature

that such ability could be improved by more suitable housing conditions.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.3 Physical disability	Response category
	0=No 1=Yes

3.4 Developmental Disability

Rationale: To count the number of developmentally disabled persons served by homeless programs, determine eligibility for disability benefits, and assess their need for services.

Data Source: Client interview, self-administered form and/or case manager records.

When Data Are Collected: In the course of client assessment once the individual is admitted, unless this information is needed prior to admission to determine program eligibility. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All clients served.

Definition and Instructions: Determine if the client has a developmental disability, meaning a severe, chronic disability that is attributed to a mental or physical impairment (or combination of physical and mental impairments) that occurs before 22 years of age and limits the capacity for independent living and economic self-sufficiency.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.4 Developmental disability	Response category
	0=No 1=Yes

3.5 HIV/AIDS

Rationale: To identify persons who have been diagnosed with AIDS or have tested positive for HIV and assess their need for services.

Data Source: Client interview, self-administered form and/or case manager records.

When Data are Collected: In the course of client assessment once the individual is admitted, unless this information is needed prior to admission to determine program eligibility. Needed to complete APRs for certain HUD McKinney-Vento Act programs and is an eligibility requirement for HOPWA.

Subjects: All adults and unaccompanied youth served.

Definition and Instructions: Determine if the client has been diagnosed with AIDS or has tested positive for HIV. If the client does not provide the information and it is not contained in case manager records, leave the response field blank.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.5 HIV/AIDS	Response category
	0=No 1=Yes

Special Issues: This information is required for determining eligibility for the HOPWA program. Such information is covered by confidentiality requirements. As in other areas involving sensitive or protected client information, information should be recorded only when a program or project has adequate data confidentiality protections. These protections include agency policies and procedures and staff training to ensure that HIV-related information cannot be learned by anyone without the proper authorization.

3.6 Mental Health

Rationale: To count the number of persons served with mental health problems, and to assess the need for treatment.

Data Source: Client interview, self-administered form and/or case manager records.

When Data are Collected: In the course of client assessment once the individual is admitted, unless this information is needed prior to admission to determine program eligibility. Needed to complete APRs for certain HUD McKinney-Vento Act programs.

Subjects: All adults and unaccompanied youth served.

Definition and Instructions: In separate data fields, determine: (a) If the client has a mental health problem; and (b) whether it is expected to be of long-continued and indefinite duration and substantially impedes a client's ability to live independently. A mental health problem may include serious depression, serious anxiety, hallucinations, violent behavior or thoughts of suicide.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.6 Mental Health	Response Category
Mental health problem	0=No 1=Yes
Expected to be of long-continued and indefinite duration and substantially impairs ability to live independently.	0=No 1=Yes

3.7 Substance Abuse

Rationale: To count the number of persons served with substance abuse problems, and to assess the need for treatment.

Data Source: Client interview, self-administered form and/or case manager records.

When Data are Collected: In the course of client assessment once the individual is admitted, unless this information is needed prior to admission to determine program eligibility. Needed to complete APRs for certain HUD McKinney-Vento Act programs.

Subjects: All adults and unaccompanied youth served.

Definition and Instructions: In separate data fields, determine (a) if the client has an alcohol or drug abuse problem, or is dully diagnosed and (b) whether it is expected to be of long-continued and indefinite duration and substantially impedes a client's ability to live independently.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.7 Substance abuse	Response category
Substance abuse problem	1 = Alcohol abuse 2 = Drug abuse 3 = Dully diagnosed
Expected to be of long-continued and indefinite duration and substantially impairs ability to live independently.	0=No 1=Yes

3.8 Domestic Violence

Rationale: Ascertaining whether a person is a victim of domestic violence is necessary to provide the person with the appropriate services to prevent further abuse and to treat the physical and psychological injuries from prior abuse. Also, ascertaining that a person may be experiencing domestic violence may be important for the safety of program staff and other clients. At the aggregate level, knowing the size of the homeless population that has

experienced domestic violence is critical for determining the resources needed to address the problem in this population.

Data Source: Client interview, self-administered form and/or case manager records.

When Data are Collected: In the course of client assessment. Needed to complete APRs for certain HUD McKinney-Vento Act programs.

Subjects: All adults and unaccompanied youth.

Definition and Instructions: In separate fields, determine (a) if the client has ever been a victim of domestic violence and (b), if so, how long ago did the client have the most recent experience.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.8 Domestic violence	Response category
Domestic violence experience. (If yes) When experience occurred.	0 = No 1 = Yes 1 = Within the past three months 2 = Three to six months ago 3 = From six to twelve months ago 4 = More than a year ago 8 = Don't know 9 = Refused

3.9 Services Received

Rationale: To determine the services provided during a program stay and any resulting outcomes. Some funders may want information on service receipt as a performance measure. Service receipt may also be useful in identifying service gaps in a community.

Data Source: Case manager records.

When Data are Collected: In the course of client assessment and at appropriate points during the program stay. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All clients served.

Definition and Instructions: For each service encounter, two types of information must be determined and recorded in two separate fields. Record ''date of service'' as the two-digit month, two-digit day and four-digit year. Record ''type of service'' as one of the service types listed below.

Required Response Categories: Note that the services listed here cover all of the types of services that a homeless person receives. Not all of these services are eligible uses of HUD program funds.

PROGRAM-SPECIFIC DATA ELEMENT

3.9 Services received	Response Category	Examples
Date of service	__ __/__ __/__ __ __ __ (Month) (Day) (Year)	(*08/31/1965*)
Service type	1 = Food	Emergency food programs and food pantries.
	2 = Housing placement	Housing search
	3 = Material goods	Clothing and personal hygiene items.
	4 = Temporary housing and other financial aid.	Rent payment or deposit assistance
	5 = Transportation	Bus passes and mass transit tokens
	6 = Consumer assistance and protection.	Money management counseling and acquiring identification/SSN
	7 = Criminal justice/legal services	Legal counseling and immigration services
	8 = Education	GED instruction, bilingual education, and literacy programs
	9 = Health care	Disability screening, health care referrals, and health education (excluding HIV/AIDS-related services, mental health care/counseling, and substance abuse services)
	10 = HIV/AIDS-related services	HIV testing, AIDS treatment, AIDS/HIV prevention and counseling
	11 = Mental health care/counseling	Telephone crisis hotlines and psychiatric programs
	12 = Substance abuse services	Detoxification and alcohol/drug abuse counseling
	13 = Employment	Job development and job finding assistance
	14 = Case/care management	Development of plans for the evaluation, treatment and/or care of persons needing assistance in planning or arranging for services
	15 = Day care	Child care centers and infant care centers
	16 = Personal enrichment	Life skills education, social skills training, and stress management
	17 = Outreach	Street outreach
	18 = Other	

Special Issues: With few exceptions, the response categories for the type of services provided and the associated examples are based on A Taxonomy of Human Services: A Conceptual Framework with Standardized Terminology and Definitions for the Field, 1994 (published by the Alliance of Information and Referral Systems (AIRS) and INFO LINE of Los Angeles). The ''HIV/AIDS-related services'' category is not included in the taxonomy under a single heading; instead there are multiple types of HIV/AIDS services found at various service typology levels. The examples associated with this response category are specific types of services identified in the taxonomy. The ''housing placement,'' ''outreach'' and ''other'' response categories are not derived from the taxonomy.

The taxonomy is a classification system for human services that has been adopted by information and referral programs, libraries, crisis lines and other programs throughout the United States. It features a five-level hierarchical structure that contains 4,300 terms that are organized into 10 basic service categories. The taxonomy provides a common language for human services, ensuring that people have common terminology for naming services, agreements regarding definitions for what a service involves and a common way of organizing service concepts.

Programs are encouraged to review the Taxonomy of Human Services as a model for a complete list of examples, standardizing terminology and definitions of homeless services.

Programs may choose to disaggregate the types of services into more detailed

service categories as long as they can be aggregated into the above stated service types.

For APR reporting purposes, programs should use the following coding approach to conform to the response categories in the current APR:

CROSS-WALK OF HMIS AND APR RESPONSE CATEGORIES FOR SERVICES RECEIVED

Response categories in the final notice	Corresponding response categories in the current APR
1 = Food	n = Other
2 = Housing/shelter	i = Housing placement
3 = Material goods	n = Other
4 = Temporary housing and other financial aid	n = Other
5 = Transportation	l = Transportation
6 = Consumer assistance and protection	c = Life skills
7 = Criminal justice/legal services	m = Legal
8 = Education	h = Education
9 = Health care	g = Other health care services
10 = HIV/AIDS-related services	f = HIV/AIDS-related services
11 = Mental health care/counseling	e = Mental health services
12 = Substance abuse services	d = Alcohol or drug abuse services
13 = Employment	j = Employment assistance
14 = Case/care management	b = Case management
15 = Day care	k = Child care
16 = Personal enrichment	c = Life skills (outside of case management)
17 = Outreach	a = Outreach
18 = Other	n = Other

3.10 Destination

Rationale: Destination is an important outcome measure.

Data Source: Client interview or self-administered form.

When Data Are Collected: At program exit. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All clients served.

Definition and Instructions: Determine and record in three separate data fields: (1) Where the client will be staying after they leave the program; (2) if this move is permanent or transitional; and (3) does the move involve a HUD subsidy or other subsidy.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.10 Destination	Response category
Destination	1 = Emergency shelter (including a youth shelter, or hotel, motel, or campground paid for with emergency shelter voucher)*
	2 = Transitional housing for homeless persons (including homeless youth)*
	3 = Permanent housing for formerly homeless persons (such as SHP, S+C, or SRO Mod Rehab)
	4 = Psychiatric hospital or other psychiatric facility
	5 = Substance abuse treatment facility or detox center
	6 = Hospital (non-psychiatric)
	7 = Jail, prison or juvenile detention facility
	10 = Room, apartment, or house that you rent
	11 = Apartment or house that you own
	12 = Staying or living in a family member's room, apartment, or house
	13 = Staying or living in a friend's room, apartment, or house
	14 = Hotel or motel paid for without emergency shelter voucher
	15 = Foster care home or foster care group home
	16 = Place not meant for habitation (*e.g.*, a vehicle, an abandoned building, bus/train/subway station/airport or anywhere outside)
	17 = Other
	8 = Don't Know
	9 = Refused
Tenure	1 = Permanent
	2 = Transitional
	8 = Don't Know
	9 = Refused
Subsidy Type	0 = None
	1 = Public housing
	2 = Section 8
	3 = S+C
	4 = HOME program
	5 = HOPWA program
	6 = Other housing subsidy
	8 = Don't Know
	9 = Refused

Special Issues: For response categories marked with an asterisk (*), these destinations are currently not eligible for HOPWA funding.

Also, programs may choose to ask additional questions such as whether upon leaving the program the client will be reuniting with other family members who have not been with them during the program stay.

For APR reporting purposes, programs should use the following coding approach to conform to the response categories in the current APR:

CROSS-WALK OF HMIS AND APR RESPONSE CATEGORIES FOR DESTINATION

Response categories in the final notice	Corresponding response categories in the APR
Destination = 1	n = Emergency shelter.
Destination = 2	i = Transitional housing for homeless persons.
Destination = 3 Subsidy Type = 3.	d = Shelter Plus Care (S+C).
Destination = 3 Subsidy Type = not equal to 3.	o = Other supportive housing.
Destination = 4	k = Institution psychiatric hospital.
Destination = 5	l = Institution inpatient alcohol or other drug treatment facility.
Destination = 6	q = Other.
Destination = 7	m = Institution jail/prison.
Destination = 8, 9, 10, or 16 Subsidy Type = 1.	b = Public housing.
Destination = 8, 9, 10, or 16 Subsidy Type = 2.	c = Section 8.
Destination = 8, 9, 10, or 16 Subsidy Type = 3.	d = Shelter Plus Care (S+C).
Destination = 8, 9, 10, or 16 Subsidy Type = 4.	e = HOME subsidized house or apartment.
Destination = 8, 9, 10, or 16 Tenure = 1. Subsidy Type = 5.	f = Permanent other subsidized house or apartment.
Destination = 8, 9, 10, or 16 Tenure = 2. Subsidy Type = 5.	q = Other (Please specify).
Destination = 8 or 9 Subsidy Type = 6, 8 or 9.	r = Unknown.
Destination = 10 Subsidy Type = 6, 8, or 9.	a = Rental House or Apt (no subsidy).
Destination = 16 Subsidy Type = 6, 8, 9.	q = Other (Please specify).
Destination = 11	g = Homeownership.
Destination = 12 Tenure = 1.	h = Permanent: moved in with family or friends.
Destination = 12 Tenure = 2, 8, or 9.	j = Transitional: moved in with family or friends.
Destination = 13	q = Other (Please specify).
Destination = 14	q = Other (Please specify).
Destination = 15	p = Other places not meant for human habitation (*e.g.*, street).

3.11 Reasons for Leaving

Rationale: Reasons for leaving are used, in part, to identify the barriers and issues clients face in completing a program or staying in a residential facility, which may affect their ability to achieve economic self-sufficiency.

Data Source: Recorded by program staff.

When Data Are Collected: At program exit. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All clients served.

Definition and Instructions: Identify the reason why the client left the program. If a client left for multiple reasons, record only the primary reason.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.11 Reason for leaving	Response category
	1 = Left for a housing opportunity before completing program 2 = Completed program 3 = Non-payment of rent/occupancy charge 4 = Non-compliance with project 5 = Criminal activity/destruction of property/violence 6 = Reached maximum time allowed by project 7 = Needs could not be met by project 8 = Disagreement with rules/persons 9 = Death 10 = Unknown/disappeared

PROGRAM-SPECIFIC DATA ELEMENT—Continued

3.11 Reason for leaving	Response category
	11 = Other

3.12 Employment

Rationale: To assess the program participant's employment status and need for employment services. This can serve as an important outcome measure.

Data Source: Client interview or self-administered form.

When Data Are Collected: In the course of client assessment and at program exit.

Subjects: All adults and unaccompanied youth served.

Definition and Instructions: In separate fields, determine: (1) If the client is currently employed; (2) if currently employed, how many hours did the client work in the last week; (3) if currently employed, is the work permanent, temporary, or seasonal; and (4) if the client is not currently working, if they are currently looking for work. Seasonal employment is work that can, by the nature of it, ordinarily only be performed during a certain season in the year. Temporary employment is work for a limited time only or for a specific piece of work and that work will last a short duration. Permanent employment is work that is contemplated to continue indefinitely.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.12 Employment	Response category
Employed	0 = No 1 = Yes

PROGRAM-SPECIFIC DATA ELEMENT—Continued

3.12 Employment	Response category
If currently working, number of hours worked in the past week.	_____ hours
Employment tenure	1 = Permanent 2 = Temporary 3 = Seasonal
If client is not currently employed, is the client looking for work.	0 = No 1 = Yes

Special Issues: Programs may choose to ask additional information about a person's employment status, for example any benefits (health insurance) received through employment or more detailed information on the type of employment.

3.13 Education

Rationale: To assess the program participant's readiness for employment and need for education services. It can also serve as an important outcome measure.

Data Source: Client interview or self-administered form.

When Data are Collected: In the course of client assessment and at program exit.

Subjects: All adults and unaccompanied youth served.

Definition and Instructions: In four separate fields, determine: (1) If the client is currently in school or working on any degree or certificate; (2) whether the client has received any vocational training or apprenticeship certificates; (3) what is the highest level of school that the client has completed; and (4) if the client has received a high school diploma or General Equivalency Diploma (GED), what degree(s) has the client earned. Allow clients to identify multiple degrees.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.13 Education	Response category
Currently in school or working on any degree or certificate	0 = No 1 = Yes
Received vocational training or apprenticeship certificates	0 = No 1 = Yes
Highest level of school completed	0 = No schooling completed 1 = Nursery school to 4th grade 2 = 5th grade or 6th grade 3 = 7th grade or 8th grade 4 = 9th grade 5 = 10th grade 6 = 11th grade 7 = 12th grade, No diploma 8 = High school diploma 9 = GED 10 = Post-secondary school
If client has received a high school diploma, GED or enrolled in post-secondary education, what degree(s) has the client earned.	0 = None 1 = Associates Degree 2 = Bachelors 3 = Masters 4 = Doctorate 5 = Other graduate/professional degree

3.14 General Health Status

Rationale: Information on general health status is a first step to identifying what types of health services a client may need. Changes in health status between intake and exit can be a valuable outcome measure. This data element permits the self-reported health status of homeless persons to be compared with the self-reported health status of the U.S. population in general.

Data Source: Client interview or self-administered form.

When Data are Collected: In the course of client assessment and at program exit.

Subjects: All clients served.

Definition and Instructions: Determine how the client assesses their health in comparison to other people their age.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.14 General health	Response category
	1 = Excellent 2 = Very good

PROGRAM-SPECIFIC DATA ELEMENT—Continued

3.14 General health	Response category
	3 = Good 4 = Fair 5 = Poor 8 = Don't Know

3.15 Pregnancy Status

Rationale: To determine eligibility for benefits and need for services, and to determine the number of women

entering programs for homeless persons while pregnant.

Data Source: Client interview or self-administered form.

When Data are Collected: In the course of client assessment.

Subjects: All females of child-bearing age served.

Definition and Instructions: In separate fields, determine (a) if a client is pregnant and (b), if so, what is the due date. The due date is one field that consists of the two-digit month, two-digit day and four-digit year. If the day is unknown, programs are encouraged to record ''01'' as a default value. Communities that already have a policy of entering another approximate day may continue this policy. If the month is unknown, programs should leave the data field blank.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.15 Pregnancy status	Response category
Pregnancy status	0 = No 1 = Yes
Due date	__ __/__ __/__ __ __ __ (Month) (Day) (Year).

3.16 Veteran's Information

Rationale: To collect a more detailed profile of the homeless veteran's experience and to determine eligibility for Department of Veterans Affairs (VA) programs and benefits. These questions were developed in consultation with the VA and reflect HUD's continuing effort to standardize data definitions and standards across federal agencies.

Data Source: Client interview or self-administered form.

When Data are Collected: In the course of client assessment.

Subjects: All persons who answered ''Yes'' to Veterans Status data element.

Definition and Instructions: In separate fields, determine: (1) Which military service era did the client serve; (2) how many months did the client serve on active duty in the military; (3) if the client served in a war zone; (4) if the client served in a war zone, the name of the war zone; (5) if the client served in a war zone, the number of months served in the war zone; (6) if the client served in a war zone, whether the client received hostile or friendly fire; (7) what branch of the military did the client serve in; and (8) what type of discharge did the client receive. In identifying the military service era served by the client, programs are encouraged to begin with the most recent service era and proceed in descending order through the various eras. Allow clients to identify multiple service eras and branches of the military.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.16 Veteran's information	Response category
Military service eras	1 = Persian Gulf Era (August 1991–Present) 2 = Post Vietnam (May 1975–July 1991) 3 = Vietnam Era (August 1964–April 1975) 4 = Between Korean and Vietnam War (February 1955–July 1964) 5 = Korean War (June 1950–January 1955) 6 = Between WWII and Korean War (August 1947–May 1950) 7 = World War II (September 1940–July 1947) 8 = Between WWI and WWII (December 1918–August 1940) 9 = World War I (April 1917–November 1918)
Duration of active duty	____months
Served in a war zone	0 = No 1 = Yes
If yes, name of war zone	1 = Europe 2 = North Africa 3 = Vietnam 4 = Laos and Cambodia 5 = South China Sea 6 = China, Burma, India 7 = Korea 8 = South Pacific 9 = Persian Gulf 10 = Other
If yes, number of months in war zone	____Months
If yes, received hostile or friendly fire	0 = No 1 = Yes
Branch of the military	1 = Army 2 = Air Force 3 = Navy 4 = Marines 5 = Other

PROGRAM-SPECIFIC DATA ELEMENT—Continued

3.16 Veteran's information	Response category
Discharge status	1 = Honorable 2 = General 3 = Medical 4 = Bad conduct 5 = Dishonorable 6 = Other

3.17 Children's Education

Rationale: To determine if homeless children and youth have the same access to free, public education, including public preschool education, that is provided to other children and youth. It can also serve as an important outcome measure. These questions were developed in consultation with the U.S. Department of Education.

Data Source: Client interview or observations of program staff.

When Data Are Collected: In the course of client assessment. The data element is strongly recommended and may be added to HUD's APR in the future.

Subjects: All children between 5 and 17 years of age.

Definition and Instructions: For each child, determine in separate fields: (1) If the child is currently enrolled in school; (2) if the child is currently enrolled, the name of the school; (3) if the child is currently enrolled, the type school; (4) if the child is not currently enrolled in school, what date was the child last enrolled in school; and (5) what problems has the head of household had in getting the child enrolled into school. The last date of enrollment consists of the two-digit month and four-digit year. If the month is unknown, programs are encouraged to record ''01'' as a default value. Communities that already have a policy of entering another approximate month may continue this policy. If the year is unknown, programs should leave the data field blank. When identifying the problems the head of household encountered when enrolling the child in school, allow clients to identify multiple reasons for not enrolling the child in school.

Required Response Categories:

PROGRAM-SPECIFIC DATA ELEMENT

3.17 Children's education	Response category
Current enrollment status	0 = No 1 = Yes
If yes, name of child's school	_____ (Example: Lone Pine Elementary School)
If yes, type of school	1 = Public school 2 = Parochial or other private school
If not enrolled, last date of enrollment	____/_____ (Month) (Year)
If not enrolled, identify problems in enrolling child	1 = None 2 = Residency requirements 3 = Availability of school records 4 = Birth certificates 5 = Legal guardianship requirements 6 = Transportation 7 = Lack of available preschool programs 8 = Immunization requirements 9 = Physical examination records 10 = Other

Special Issues: Programs may choose to obtain additional information related to children's education, such as the number of school days missed over a specific period of time, the barriers to school attendance and the name and type of the school.

EXHIBIT 4: SUMMARY OF PROGRAM-SPECIFIC DATA ELEMENTS

Data standards	Subjects	Required for APR?	Data entry or computer-generated
3.1 Income and Sources	All Clients	Yes	Data Entry.
3.2 Non-Cash Benefits	Adults and Unaccompanied Youth	Yes	Data Entry.
3.3 Physical Disability	All Clients	Yes	Data Entry.
3.4 Developmental disability	All Clients	Yes	Data Entry.
3.5 HIV/AIDS	Adults and Unaccompanied Youth	Yes	Data Entry.
3.6 Mental health	Adults and Unaccompanied Youth	Yes	Data Entry.
3.7 Substance Abuse	Adults and Unaccompanied Youth	Yes	Data Entry.
3.8 Domestic Violence	Adults and Unaccompanied Youth	Yes	Data Entry.
3.9 Services Received	All Clients	Yes	Data Entry.
3.10 Destination	All Clients	Yes	Data Entry.
3.11 Reasons for Leaving	All Clients	Yes	Data Entry.
3.12 Employment	Adults and Unaccompanied Youth	No	Data Entry.

EXHIBIT 4: SUMMARY OF PROGRAM-SPECIFIC DATA ELEMENTS—Continued

Data standards	Subjects	Required for APR?	Data entry or computer-generated
3.13 Education	Adults and Unaccompanied Youth	No	Data Entry.
3.14 General Health Status	All Clients	No	Data Entry.
3.15 Pregnancy Status	All Females of Child-bearing Age	No	Data Entry.
3.16 Veterans Information	All Persons who Answered ''Yes'' to Veterans Status data Element.	No	Data Entry.
3.17 Children's Education	Children 5–17 Years of Age	No	Data Entry.

EXHIBIT 5: RECOMMENDED QUESTIONS FOR PROGRAM-SPECIFIC DATA ELEMENTS

Income and Sources
- Q: ''I am going to read a list of income sources and I would like for you to tell me if you [and/or the children who are coming into this program with you] have received money from any of these sources in the last month and the amount from each?'' (Read each source.)
- Q: ''Over the last month, what was your total income? Please do not include the income of any persons in your household who are 18 years of age or older.''

Non-Cash Benefits
- Q: ''Have you [and/or the children who are coming into this program with you] received food stamps or money for food on a benefits card in the past month?''
- Q: ''Do you participate in the [insert response category] program?'' (or replace with local name)

Physical Disability
- Q: ''Do you consider yourself to have a physical disability? By physical disability, I mean that you have a physical problem that is not temporary and that limits your ability to get around or work, or your ability to live on your own.''

Developmental disability
- Q: ''Have you ever received benefits or services (such as an income supplement or special education classes) for a developmental disability?'

HIV/AIDS
- Q: ''Have you been diagnosed with AIDS or have you tested positive for HIV?''

Mental health
- Q: ''Do you feel that you have a mental health problem such as serious depression, serious anxiety, hallucinations, violent behavior, thoughts of suicide?''
- If yes, ask the following question:
- Q: ''Do you feel that this mental health problem will last for a long time and limits your ability to live on your own?''

Substance Abuse
- Q: ''Do you feel that you have a problem with alcohol?''
- Q: ''Do you feel that you have a problem with drugs?''
- If yes to either or both questions, ask the following question:
- Q: ''Do you feel that this substance abuse problem will last for a long time and limits your ability to live on your own?''

Domestic Violence
- Q: ''Have you experienced domestic or intimate partner violence?''
- If yes, ask the following question:
- Q: ''How long ago did you have this experience?''

Services Received
- No question needed.

Destination
- Q: ''After you leave this program, where will you be living?''
- Q: ''Is this move permanent (more than 90 days) or temporary?''
- Q: ''Does the move involve a HUD subsidy or other subsidy?''

Reasons for Leaving
- Q: ''What is the main reason for leaving this program?''

Employment
- Q: ''Are you currently employed?''
- If yes, ask the following questions:
- Q: ''How many hours did you work last week?''
- Q: ''Was this permanent, temporary, or seasonal work?''
- If client reports that he/she is not working, ask the following question:
- Q: ''Are you currently looking for work?''

Education
- Q: ''Are you in school now, or working on any degree or certificate?''
- Q: ''Have you received any vocational training or apprenticeship certificates?''
- Q: ''What is the highest level of school that you have completed?''
- If client has received a high school diploma or GED, ask the following questions:
- Q: ''Have you received any of the following degrees?'' (Ask about each degree until the client answers ''no.'')

General Health Status
- Q: ''Compared to other people your age, would you say your health is excellent, very good, good, fair, or poor?''

Pregnancy Status
- Q: ''Are you pregnant?''
- If yes, then ask the following question:
- Q: ''What is your due date?''

Veterans Information
- Q: ''In which military service eras did you serve (choose all that apply)?''
- Q: ''How many months did you serve on active duty in the military?''

EXHIBIT 5: RECOMMENDED QUESTIONS FOR PROGRAM-SPECIFIC DATA ELEMENTS—Continued

Q: "Did you serve in a war zone?"
Q: "What war zone(s) (choose all that apply)?"
Q: "What was the number of months served in a war zone?"
Q: "Did you ever receive hostile or friendly fire in a war zone?"
Q: "What branch of the military did you serve in?"
Q: "What type of discharge did you receive?"

Children's Education

Q: "Is [name of child] currently enrolled in school?"
If child is currently enrolled, ask:
Q: "What is the name of the child's school(s)?"
Q: "What type of school is it? Is it a public or private school?"
If child is currently not enrolled in school, ask:
Q: "When was [name of child] last enrolled in school?"
Q: "I'm going to read a list of problems that you may have had getting your child into a school. Please tell me if you have experienced any of these problems for [name of child]." (Ask each.)

EXHIBIT 6: REQUIRED RESPONSE CATEGORIES FOR PROGRAM-SPECIFIC DATA ELEMENTS

	Response category	
	Source of income	Amount from source
3.1 Income and source:		
Source and amount of income	1 = Earned Income	$_ _ _ _.00
	2 = Unemployment Insurance	_ _ _ _.00
	3 = Supplemental Security Income or SSI	_ _ _ _.00
	4 = Social Security Disability Income (SSDI)	_ _ _ _.00
	5 = A veteran's disability payment	_ _ _ _.00
	6 = Private disability insurance	_ _ _ _.00
	7 = Worker's compensation	_ _ _ _.00
	8 = Temporary Assistance for Needy Families (TANF) (or use local program name).	_ _ _ _.00
	9 = General Assistance (GA) (or use local program name)	_ _ _ _.00
	10 = Retirement income from Social Security	_ _ _ _.00
	11 = Veteran's pension	_ _ _ _.00
	12 = Pension from a former job	_ _ _ _.00
	13 = Child support	_ _ _ _.00
	14 = Alimony or other spousal support	_ _ _ _.00
	15 = Other source	_ _ _ _.00
	16 = No financial resources.	
Total monthly income		_ _ _ _.00

	Response category
3.2 Source of non-cash benefit:	
Source of non-cash benefit	1 = Food stamps or money for food on a benefits card.
	2 = MEDICAID health insurance program (or use local name).
	3 = MEDICARE health insurance program (or use local name).
	4 = State Children's Health Insurance Program (or use local name).
	5 = Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
	6 = Veteran's Administration (VA) Medical Services.
	7 = TANF Child Care services (or use local name).
	8 = TANF transportation services (or use local name).
	9 = Other TANF-funded services (or use local name).
	10 = Section 8, public housing, or other rental assistance.
	11 = Other source.
3.3 Physical disability	0 = No 1 = Yes
3.4 Developmental disability	0 = No 1 = Yes
3.5 HIV/AIDS	0 = No 1 = Yes
3.6 Mental Health:	
Mental health problem	0 = No 1 = Yes
Expected to be of long-continued and indefinite duration and substantially impairs ability to live independently.	0 = No 1 = Yes
3.7 Substance abuse:	
Substance abuse problem	1 = Alcohol abuse.
	2 = Drug abuse.
	3 = Dully diagnosed.

	Response category
Expected to be of long-continued and indefinite duration and substantially impairs ability to live independently.	0 = No 1 = Yes
3.8 Domestic violence:	
Domestic violence experience	0 = No 1 = Yes
(If yes) When experience occurred	1 = Within the past three months. 2 = Three to six months ago. 3 = From six to twelve months ago. 4 = More than a year ago. 8 = Don't know. 9 = Refused.

	Response Category	Examples;
3.9 Services received:		
Date of service	__ __/__ __/__ __ __ __ (Month) (Day) (Year)	(*08/31/1965*)
Service type	1 = Food	Emergency food programs and food pantries.
	2 = Housing placement	Housing search.
	3 = Material goods	Clothing and personal hygiene items.
	4 = Temporary housing and other financial aid.	Rent payment or deposit assistance.
	5 = Transportation	Bus passes and mass transit tokens.
	6 = Consumer assistance and protection.	Money management counseling and acquiring identification/SSN.
	7 = Criminal justice/legal services	Legal counseling and immigration services.
	8 = Education	GED instruction, bilingual education, and literacy programs.
	9 = Health care	Disability screening, health care referrals, and health education (excluding HIV/AIDS-related services, mental health care/counseling, and substance abuse services).
	10 = HIV/AIDS-related services	HIV testing, AIDS treatment, AIDS/HIV prevention and counseling.
	11 = Mental health care/counseling	Telephone crisis hotlines and psychiatric programs.
	12 = Substance abuse services	Detoxification and alcohol/drug abuse counseling.
	13 = Employment	Job development and job finding assistance.
	14 = Case/care management	Development of plans for the evaluation, treatment and/or care of persons needing assistance in planning or arranging for services.
	15 = Day care	Child care centers and infant care centers.
	16 = Personal enrichment	Life skills education, social skills training, and stress management.
	17 = Outreach	Street outreach.
	18 = Other.	

	Response category
3.10 Destination:	
Destination	1 = Emergency shelter (including a youth shelter, or hotel, motel, or campground paid for with emergency shelter voucher)*. 2 = Transitional housing for homeless persons (including homeless youth)*. 3 = Permanent housing for formerly homeless persons (such as SHP, S+C, or SRO Mod Rehab). 4 = Psychiatric hospital or other psychiatric facility. 5 = Substance abuse treatment facility or detox center. 6 = Hospital (non-psychiatric). 7 = Jail, prison or juvenile detention facility. 10 = Room, apartment, or house that you rent. 11 = Apartment or house that you own. 12 = Staying or living in a family member's room, apartment, or house. 13 = Staying or living in a friend's room, apartment, or house. 14 = Hotel or motel paid for without emergency shelter voucher. 15 = Foster care home or foster care group home. 16 = Place not meant for habitation (e.g., a vehicle, an abandoned building, bus/train/subway station/airport or anywhere outside). 17 = Other. 8 = Don't Know.

	Response category
Tenure	9 = Refused. 1 = Permanent. 2 = Transitional. 8 = Don't Know. 9 = Refused.
Subsidy Type	0 = None. 1 = Public housing. 2 = Section 8. 3 = S+C. 4 = HOME program. 5 = HOPWA program. 6 = Other housing subsidy. 8 = Don't Know. 9 = Refused.
For response categories marked with an asterisk (*), these destinations are currently not eligible for HOPWA funding.	
3.11 Reason for leaving:	
Reason for leaving	1 = Left for a housing opportunity before completing program. 2 = Completed program. 3 = Non-payment of rent/occupancy charge. 4 = Non-compliance with project. 5 = Criminal activity/destruction of property/violence. 6 = Reached maximum time allowed by project. 7 = Needs could not be met by project. 8 = Disagreement with rules/persons. 9 = Death. 10 = Unknown/disappeared. 11 = Other.
3.12 Employment:	
Employed	0 = No 1 = Yes
If currently working, number of hours worked in the past week.	_____hours.
Employment tenure	1 = Permanent. 2 = Temporary. 3 = Seasonal.
If client is not currently employed, is the client looking for work.	0 = No 1 = Yes
3.13 Education:	
Currently in school or working on any degree or certificate.	0 = No 1 = Yes
Received vocational training or apprenticeship certificates.	0 = No 1 = Yes
Highest level of school completed	0 = No schooling completed. 1 = Nursery school to 4th grade. 2 = 5th grade or 6th grade. 3 = 7th grade or 8th grade. 4 = 9th grade. 5 = 10th grade. 6 = 11th grade. 7 = 12th grade, No diploma. 8 = High school diploma. 9 = GED. 10 = Post-secondary school.
If client has received a high school diploma, GED, or enrolled in post-secondary education, what degree(s) has the client earned.	0 = None. 1 = Associates Degree. 2 = Bachelors. 3 = Masters. 4 = Doctorate. 5 = Other graduate/professional degree.
3.14 General Health:	1 = Excellent. 2 = Very good. 3 = Good. 4 = Fair. 5 = Poor. 8 = Don't Know.
3.15 Pregnancy Status:	
Pregnancy Status	0 = No 1 = Yes

	Response category
Due Date	__ __/__ __/__ __ __ __ (Month) (Day) (Year).
3.16 Veteran's Information:	
Military Service Eras	1 = Persian Gulf Era (August 1991–Present). 2 = Post Vietnam (May 1975–July 1991). 3 = Vietnam Era (August 1964–April 1975). 4 = Between Korean and Vietnam War (February 1955–July 1964). 5 = Korean War (June 1950–January 1955). 6 = Between WWII and Korean War (August 1947–May 1950). 7 = World War II (September 1940–July 1947). 8 = Between WWI and WWII (December 1918–August 1940). 9 = World War I (April 1917–November 1918).
Duration of Active Duty	_____months.
Served in a War Zone	0 = No 1 = Yes.
If yes, name of war zone	1 = Europe. 2 = North Africa. 3 = Vietnam. 4 = Laos and Cambodia. 5 = South China Sea. 6 = China, Burma, India. 7 = Korea. 8 = South Pacific. 9 = Persian Gulf. 10 = Other.
If yes, number of months in war zone	_____months.
If yes, received hostile or friendly fire	0 = No 1 = Yes
Branch of the Military	1 = Army. 2 = Air Force. 3 = Navy. 4 = Marines. 5 = Other.
Discharge Status	1 = Honorable. 2 = General. 3 = Medical. 4 = Bad conduct. 5 = Dishonorable. 6 = Other.
3.17 Children's Education:	
Current Enrollment Status	0 = No 1 = Yes
If yes, name of child's school	_____ (Example: Lone Pine Elementary School).
If yes, type of school	1 = Public school. 2 = Parochial or other private school.
If not enrolled, last date of enrollment	__ __/__ __ __ __ (Month) (Year).
If not enrolled, identify problems in enrolling child.	1 = None. 2 = Residency requirements. 3 = Availability of school records. 4 = Birth certificates. 5 = Legal guardianship requirements. 6 = Transportation. 7 = Lack of available preschool programs. 8 = Immunization requirements. 9 = Physical examination records. 10 = Other.

4. HMIS Privacy and Security Standards

This section of the Notice describes standards for the privacy and security of personal information collected and stored in an HMIS. The standards seek to protect the confidentiality of personal information while allowing for reasonable, responsible, and limited uses and disclosures of data. These privacy and security standards are based on principles of fair information practices and on security standards recognized by the information privacy and technology communities. The standards were developed after careful review of the Health Insurance Portability and Accountability Act (HIPAA) standards for securing and protecting patient information. Given the importance of ensuring data confidentiality, HUD intends to provide training and technical assistance for its grantees on this topic.

The section defines baseline standards that will be required of any organization (such as a Continuum of Care, homeless assistance provider, or HMIS software company) that records, uses, or processes PPI on homeless clients for an HMIS. This section also identifies additional protocols or policies that organizations may choose

to adopt to enhance further the privacy and security of information collected through HMIS. Organizations are encouraged to apply these additional protections to protect client information as they deem appropriate. They must also comply with federal, state and local laws that require additional confidentiality protections.

This two-tiered approach recognizes the broad diversity of organizations that participate in HMIS and the differing programmatic and organizational realities that may demand a higher standard for some activities. Some organizations (*e.g.*, such as those serving victims of domestic violence) may choose to implement higher levels of privacy and security standards because of the nature of their homeless population and/or service provision. Others (*e.g.*, large emergency shelters) may find the higher standards overly burdensome or impractical. At a minimum, however, all organizations must meet the baseline privacy and security requirements described in this section. This approach provides a uniform floor of protection for homeless clients with the possibility of additional protections for organizations with additional needs or capacities.

Sections 4.1 and 4.2 discuss HMIS privacy standards. Section 4.3 discusses security standards.

4.1. HMIS Privacy Standards: Definitions and Scope

4.1.1. Definition of Terms

1. *Protected Personal Information (PPI).* Any information maintained by or for a Covered Homeless Organization about a living homeless client or homeless individual that: (1) Identifies, either directly or indirectly, a specific individual; (2) can be manipulated by a reasonably foreseeable method to identify a specific individual; or (3) can be linked with other available information to identify a specific individual.

2. *Covered Homeless Organization (CHO).* Any organization (including its employees, volunteers, affiliates, contractors, and associates) that records, uses or processes PPI on homeless clients for an HMIS.

3. *Processing.* Any operation or set of operations performed on PPI, whether or not by automated means, including but not limited to collection, maintenance, use, disclosure, transmission and destruction of the information.

4. *HMIS Uses and Disclosures.* The uses and disclosures of PPI that are allowed by these standards.

4.1.2. Applying the HMIS Privacy and Security Standards

These privacy standards apply to any homeless assistance organization that records, uses or processes protected personal information (PPI) for an HMIS. A provider that meets this definition is referred to as a covered homeless organization (CHO). All PPI maintained by a CHO is subject to these standards.

Any CHO that is covered under the HIPAA is not required to comply with the privacy or security standards in this Notice if the CHO determines that a substantial portion of its PPI about homeless clients or homeless individuals is protected health information as defined in the HIPAA rules. Exempting HIPAA covered entities from the HMIS privacy and security rules avoids all possible conflicts between the two sets of rules. The HMIS standards give precedence to the HIPAA privacy and security rules because: (1) The HIPAA rules are more finely attuned to the requirements of the health care system; (2) the HIPAA rules provide important privacy and security protections for protected health information; and (3) requiring a homeless provider to comply with or reconcile two sets of rules would be an unreasonable burden.

It is possible that part of a homeless organization's operations may be covered by the HMIS standards while another part is covered by the HIPAA standards. A CHO that, because of organizational structure, legal requirement, or other reason, maintains personal information about a homeless client that does not fall under the privacy and security standards in this section (*e.g.*, the information is subject to the HIPAA health privacy rule) must describe that information in its privacy notice and explain the reason the information is not covered. The purpose of the disclosure requirement is to avoid giving the impression that all personal information will be protected under the HMIS standards if other standards or if no standards apply.

4.1.3. Allowable HMIS Uses and Disclosures of Protected Personal Information (PPI)

A CHO may use or disclose PPI from an HMIS under the following circumstances: (1) To provide or coordinate services to an individual; (2) for functions related to payment or reimbursement for services; (3) to carry out administrative functions, including but not limited to legal, audit, personnel, oversight and management functions; or (4) for creating de-identified PPI.

CHOs, like other institutions that maintain personal information about individuals, have obligations that may transcend the privacy interests of clients. The following additional uses and disclosures recognize those obligations to use or share personal information by balancing competing interests in a responsible and limited way. Under the HMIS privacy standard, these additional uses and disclosures are permissive and not mandatory (except for first party access to information and any required disclosures for oversight of compliance with HMIS privacy and security standards). However, nothing in this standard modifies an obligation under applicable law to use or disclose personal information.

Uses and disclosures required by law. A CHO may use or disclose PPI when required by law to the extent that the use or disclosure complies with and is limited to the requirements of the law.

Uses and disclosures to avert a serious threat to health or safety. A CHO may, consistent with applicable law and standards of ethical conduct, use or disclose PPI if: (1) The CHO, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public; and (2) the use or disclosure is made to a person reasonably able to prevent or lessen the threat, including the target of the threat.

Uses and disclosures about victims of abuse, neglect or domestic violence. A CHO may disclose PPI about an individual whom the CHO reasonably believes to be a victim of abuse, neglect or domestic violence to a government authority (including a social service or protective services agency) authorized by law to receive reports of abuse, neglect or domestic violence under any of the following circumstances:

- Where the disclosure is required by law and the disclosure complies with and is limited to the requirements of the law;
- If the individual agrees to the disclosure; or
- To the extent that the disclosure is expressly authorized by statute or regulation; and the CHO believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or if the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the PPI for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be

materially and adversely affected by waiting until the individual is able to agree to the disclosure.

A CHO that makes a permitted disclosure about victims of abuse, neglect or domestic violence must promptly inform the individual that a disclosure has been or will be made, except if:

- The CHO, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
- The CHO would be informing a personal representative (such as a family member or friend), and the CHO reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing the personal representative would not be in the best interests of the individual as determined by the CHO, in the exercise of professional judgment.

Uses and disclosures for academic research purposes. A CHO may use or disclose PPI for academic research conducted by an individual or institution that has a formal relationship with the CHO if the research is conducted either:

- By an individual employed by or affiliated with the organization for use in a research project conducted under a written research agreement approved in writing by a program administrator (other than the individual conducting the research) designated by the CHO; or
- By an institution for use in a research project conducted under a written research agreement approved in writing by a program administrator designated by the CHO.

A written research agreement must: (1) Establish rules and limitations for the processing and security of PPI in the course of the research; (2) provide for the return or proper disposal of all PPI at the conclusion of the research; (3) restrict additional use or disclosure of PPI, except where required by law; and (4) require that the recipient of data formally agree to comply with all terms and conditions of the agreement.

A written research agreement is not a substitute for approval of a research project by an Institutional Review Board, Privacy Board or other applicable human subjects protection institution.

Disclosures for law enforcement purposes. A CHO may, consistent with applicable law and standards of ethical conduct, disclose PPI for a law enforcement purpose to a law enforcement official under any of the following circumstances:

- In response to a lawful court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or a grand jury subpoena;
- If the law enforcement official makes a written request for protected personal information that: (1) Is signed by a supervisory official of the law enforcement agency seeking the PPI; (2) states that the information is relevant and material to a legitimate law enforcement investigation; (3) identifies the PPI sought; (4) is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (5) states that de-identified information could not be used to accomplish the purpose of the disclosure.
- If the CHO believes in good faith that the PPI constitutes evidence of criminal conduct that occurred on the premises of the CHO;
- In response to an oral request for the purpose of identifying or locating a suspect, fugitive, material witness or missing person and the PPI disclosed consists only of name, address, date of birth, place of birth, Social Security Number, and distinguishing physical characteristics; or
- If (1) the official is an authorized federal official seeking PPI for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879 (threats against the President and others); and (2) the information requested is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.

4.2. Privacy Requirements

All CHOs must comply with the baseline privacy requirements described here with respect to: data collection limitations; data quality; purpose and use limitations; openness; access and correction; and accountability. A CHO may adopt additional substantive and procedural privacy protections that exceed the baseline requirements for each of these areas. A CHO must comply with federal, state and local laws that require additional confidentiality protections. All additional protections must be described in the CHO's privacy notice. A CHO must comply with all baseline privacy protections and with all additional privacy protections included in its privacy notice.

A CHO may maintain a common data storage medium with another organization (including but not limited to another CHO) that includes the sharing of PPI. When PPI is shared between organizations, responsibilities for privacy and security may reasonably be allocated between the organizations. Organizations sharing a common data storage medium and PPI may adopt differing privacy and security policies as they deem appropriate, administratively feasible, and consistent with these HMIS privacy and security standards, as long as these privacy and security policies allow for the unduplication of homeless clients at the CoC level.

4.2.1. Collection Limitation

Baseline requirement. A CHO may collect PPI only when appropriate to the purposes for which the information is obtained or when required by law. A CHO must collect PPI by lawful and fair means and, where appropriate, with the knowledge or consent of the individual.

A CHO must post a sign at each intake desk (or comparable location) that explains generally the reasons for collecting this information. Consent of the individual for data collection may be inferred from the circumstances of the collection. Providers may use the following language to meet this standard: ''We collect personal information directly from you for reasons that are discussed in our privacy statement. We may be required to collect some personal information by law or by organizations that give us money to operate this program. Other personal information that we collect is important to run our programs, to improve services for homeless persons, and to better understand the needs of homeless persons. We only collect information that we consider to be appropriate.''

Additional Privacy Protections. A CHO may, in its privacy notice, commit itself to additional privacy protections consistent with HMIS requirements, including, but not limited to:

(1) Restricting collection of personal data, other than required HMIS data elements;

(2) Collecting PPI only with the express knowledge or consent of the individual (unless required by law); and

(3) Obtaining oral or written consent from the individual for the collection of personal information from the individual or from a third party.

4.2.2. Data Quality

Baseline Requirement. PPI collected by a CHO must be relevant to the purpose for which it is to be used. To the extent necessary for those purposes, PPI should be accurate, complete and timely.

A CHO must develop and implement a plan to dispose of or, in the alternative, to remove identifiers from, PPI that is not in current use seven years after the PPI was created or last changed

(unless a statutory, regulatory, contractual, or other requirement mandates longer retention). Standards for destroying information are provided in Section 4.3.

4.2.3. Purpose Specification and Use Limitation

Baseline Requirement. A CHO must specify in its privacy notice the purposes for which it collects PPI and must describe all uses and disclosures. A CHO may use or disclose PPI only if the use or disclosure is allowed by this standard and is described in its privacy notice. A CHO may infer consent for all uses and disclosures specified in the notice and for uses and disclosures determined by the CHO to be compatible with those specified in the notice.

Except for first party access to information and any required disclosures for oversight of compliance with HMIS privacy and security standards, all uses and disclosures are permissive and not mandatory. Uses and disclosures not specified in the privacy notice can be made only with the consent of the individual or when required by law.

Additional Privacy Protections. A CHO may, in its privacy notice, commit itself to additional privacy protections consistent with HMIS requirements, including, but not limited to:

(1) Seeking either oral or written consent for some or all processing when individual consent for a use, disclosure or other form of processing is appropriate;

(2) Agreeing to additional restrictions on use or disclosure of an individual's PPI at the request of the individual if the request is reasonable. The CHO is bound by the agreement, except if inconsistent with legal requirements;

(3) Limiting uses and disclosures to those specified in its privacy notice and to other uses and disclosures that are necessary for those specified;

(4) Committing that PPI may not be disclosed directly or indirectly to any government agency (including a contractor or grantee of an agency) for inclusion in any national homeless database that contains personal protected information unless required by statute;

(5) Committing to maintain an audit trail containing the date, purpose and recipient of some or all disclosures of PPI;

(6) Committing to make audit trails of disclosures available to the homeless individual; and

(7) Limiting disclosures of PPI to the minimum necessary to accomplish the purpose of the disclosure.

4.2.4. Openness

Baseline Requirement. A CHO must publish a privacy notice describing its polices and practices for the processing of PPI and must provide a copy of its privacy notice to any individual upon request. If a CHO maintains a public web page, the CHO must post the current version of its privacy notice on the web page. A CHO may, if appropriate, omit its street address from its privacy notice. A CHO must post a sign stating the availability of its privacy notice to any individual who requests a copy.

A CHO must state in its privacy notice that the policy may be amended at any time and that amendments may affect information obtained by the CHO before the date of the change. An amendment to the privacy notice regarding use or disclosure will be effective with respect to information processed before the amendment, unless otherwise stated. All amendments to the privacy notice must be consistent with the requirements of these privacy standards. A CHO must maintain permanent documentation of all privacy notice amendments.

CHOs are reminded that they are obligated to provide reasonable accommodations for persons with disabilities throughout the data collection process. This may include but is not limited to, providing qualified sign language interpreters, readers or materials in accessible formats such as Braille, audio, or large type, as needed by the individual with a disability. *See* 24 CFR 8.6; 28 CFR 36.303. **Note:** This obligation does not apply to CHOs who do not receive federal financial assistance and who are also exempt from the requirements of Title III of the Americans with Disabilities Act because they qualify as ''religious entities'' under that Act.

In addition, CHOs that are recipients of federal financial assistance shall provide required information in languages other than English that are common in the community, if speakers of these languages are found in significant numbers and come into frequent contact with the program. *See HUD Limited English Proficiency Recipient Guidance* published on December 18, 2003 (68 FR 70968).

Additional Privacy Protections. A CHO may, in its privacy notice, commit itself to additional privacy protections consistent with HMIS requirements, including, but not limited to:

(1) making a reasonable effort to offer a copy of the privacy notice to each client at or around the time of data collection or at another appropriate time;

(2) giving a copy of its privacy notice to each client on or about the time of first data collection. If the first contact is over the telephone, the privacy notice may be provided at the first in-person contact (or by mail, if requested); and/or

(3) adopting a policy for changing its privacy notice that includes advance notice of the change, consideration of public comments, and prospective application of changes.

4.2.5. Access and Correction

Baseline Requirement. In general, a CHO must allow an individual to inspect and to have a copy of any PPI about the individual. A CHO must offer to explain any information that the individual may not understand.

A CHO must consider any request by an individual for correction of inaccurate or incomplete PPI pertaining to the individual. A CHO is not required to remove any information but may, in the alternative, mark information as inaccurate or incomplete and may supplement it with additional information.

In its privacy notice, a CHO may reserve the ability to rely on the following reasons for denying an individual inspection or copying of the individual's PPI:

(1) Information compiled in reasonable anticipation of litigation or comparable proceedings;

(2) information about another individual (other than a health care or homeless provider);

(3) information obtained under a promise of confidentiality (other than a promise from a health care or homeless provider) if disclosure would reveal the source of the information; or

(4) information, the disclosure of which would be reasonably likely to endanger the life or physical safety of any individual.

A CHO can reject repeated or harassing requests for access or correction. A CHO that denies an individual's request for access or correction must explain the reason for the denial to the individual and must include documentation of the request and the reason for the denial as part of the protected personal information about the individual.

Additional Privacy Protections. A CHO may, in its privacy notice, commit itself to additional privacy protections consistent with HMIS requirements, including, but not limited to:

(1) Accepting an appeal of a denial of access or correction by adopting its own

appeal procedure and describing the procedure in its privacy notice;

(2) Limiting the grounds for denial of access by not stating a recognized basis for denial in its privacy notice;

(3) Allowing an individual whose request for correction has been denied to add to the individual's information a concise statement of disagreement. A CHO may agree to disclose the statement of disagreement whenever it discloses the disputed PPI to another person. These procedures must be described in the CHO's privacy notice; and/or

(4) Providing to an individual a written explanation of the reason for a denial of an individual's request for access or correction.

4.2.6. Accountability

Baseline Requirement. A CHO must establish a procedure for accepting and considering questions or complaints about its privacy and security policies and practices. A CHO must require each member of its staff (including employees, volunteers, affiliates, contractors and associates) to sign (annually or otherwise) a confidentiality agreement that acknowledges receipt of a copy of the privacy notice and that pledges to comply with the privacy notice.

Additional Privacy Protections. A CHO may, in its privacy notice, commit itself to additional privacy protections consistent with HMIS requirements, including, but not limited to:

(1) Requiring each member of its staff (including employees, volunteers, affiliates, contractors and associates) to undergo (annually or otherwise) formal training in privacy requirements;

(2) Establishing a method, such as an internal audit, for regularly reviewing compliance with its privacy policy;

(3) Establishing an internal or external appeal process for hearing an appeal of a privacy complaint or an appeal of a denial of access or correction rights; and/or

(4) Designating a chief privacy officer to supervise implementation of the CHO's privacy standards.

4.3. Security Standards

This section describes the standards for system, application and hard copy security. All CHOs must comply with the baseline security requirements. A CHO may adopt additional security protections that exceed the baseline requirements if it chooses.

4.3.1. System Security

Applicability. Baseline Requirement. A CHO must apply system security provisions to all the systems where personal protected information is stored, including, but not limited to, a CHO's networks, desktops, laptops, mini-computers, mainframes and servers.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by applying system security provisions to all electronic and hard copy information that is not collected specifically for the HMIS. A CHO may also seek an outside organization to perform an internal security audit and certify system security.

User Authentication. Baseline Requirement. A CHO must secure HMIS systems with, at a minimum, a user authentication system consisting of a username and a password. Passwords must be at least eight characters long and meet reasonable industry standard requirements. These requirements include, but are not limited to:

(1) Using at least one number and one letter;

(2) Not using, or including, the username, the HMIS name, or the HMIS vendor's name; and/or

(3) Not consisting entirely of any word found in the common dictionary or any of the above spelled backwards.

Using default passwords on initial entry into the HMIS application is allowed so long as the application requires that the default password be changed on first use. Written information specifically pertaining to user access (*e.g.*, username and password) may not be stored or displayed in any publicly accessible location. Individual users must not be able to log on to more than one workstation at a time, or be able to log on to the network at more than one location at a time.

Additional Security Protections. A CHO may commit to additional security protections consistent with HMIS requirements by including one of each of the following kinds of characters in the password:

(1) upper and lower-case letters;

(2) numbers; and/or

(3) symbols.

A common solution to creating complex passwords is to use phrases instead of individual words as passwords, capitalize each new word in the phrase, and substitute numbers and symbols for letters in any given word. For example, the phrase ''secure password'' can be modified to ''$3cur3P@$$w0rd'' by replacing the letter ''s'' with ''$,'' the letter ''e'' with the number ''3,'' the letter ''a'' with ''@'' and the letter ''o'' with the number ''0,'' and eliminating spaces between words.

Virus Protection. Baseline Requirement. A CHO must protect HMIS systems from viruses by using commercially available virus protection software. Virus protection must include automated scanning of files as they are accessed by users on the system where the HMIS application is housed. A CHO must regularly update virus definitions from the software vendor.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by automatically scanning all files for viruses when the system is turned on, shut down or not actively being used.

Firewalls. Baseline Requirement. A CHO must protect HMIS systems from malicious intrusion behind a secure firewall. Each individual workstation does not need its own firewall, as long as there is a firewall between that workstation and any systems, including the Internet and other computer networks, located outside of the organization. For example, a workstation that accesses the Internet through a modem would need its own firewall. A workstation that accesses the Internet through a central server would not need a firewall as long as the server has a firewall. Firewalls are commonly included with all new operating systems. Older operating systems can be equipped with secure firewalls that are available both commercially and for free on the Internet.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by applying a firewall to all HMIS workstations and systems.

Public Access. Baseline Requirement. HMIS that use public forums for data collection or reporting must be secured to allow only connections from previously approved computers and systems through Public Key Infrastructure (PKI) certificates, or extranets that limit access based on the Internet Provider (IP) address, or similar means. A public forum includes systems with public access to any part of the computer through the Internet, modems, bulletin boards, public kiosks or similar arenas. Further information on these tools can be found in the HMIS Consumer Guide and the HMIS Implementation Guide, both available on HUD's Web site.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by using PKI certificates and extranets that limit access based on the IP address. A very secure system would not house any

HMIS data on systems that are accessible to the general public.

Physical Access to Systems With Access to HMIS Data. Baseline Requirement. A CHO must staff computers stationed in public areas that are used to collect and store HMIS data at all times. When workstations are not in use and staff are not present, steps should be taken to ensure that the computers and data are secure and not usable by unauthorized individuals. After a short amount of time, workstations should automatically turn on a password protected screen saver when the workstation is temporarily not in use. Password protected screen savers are a standard feature with most operating systems and the amount of time can be regulated by a CHO. If staff from a CHO will be gone for an extended period of time, staff should log off the data entry system and shut down the computer.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by automatically logging users off of the HMIS application after a period of inactivity and automatically logging users off of the system after a period of inactivity. Most server operating systems come equipped with the needed software to automatically perform these functions. If staff from a CHO will be gone for an extended period of time, staff should store the computer and data in a locked room.

Disaster Protection and Recovery. Baseline Requirement. A CHO must copy all HMIS data on a regular basis to another medium (*e.g.*, tape) and store it in a secure off-site location where the required privacy and security standards would also apply. A CHO that stores data in a central server, mini-computer or mainframe must store the central server, mini-computer or mainframe in a secure room with appropriate temperature control and fire suppression systems. Surge suppressors must be used to protect systems used for collecting and storing all the HMIS data.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by providing, among other options, fire and water protection at the off-site location that houses the storage medium. A CHO may also seek an outside organization to conduct a disaster protection audit.

Disposal. Baseline Requirement. In order to delete all HMIS data from a data storage medium, a covered homeless organization must reformat the storage medium. A CHO should reformat the storage medium more than once before reusing or disposing the medium.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by destroying media at a bonded vendor to ensure all the HMIS data is completely destroyed.

System Monitoring. Baseline Requirement. A CHO must use appropriate methods to monitor security systems. Systems that have access to any HMIS data must maintain a user access log. Many new operating systems and web servers are equipped with access logs and some allow the computer to email the log information to a designated user, usually a system administrator. Logs must be checked routinely.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by checking user access logs routinely for inappropriate access, hardware and software problems, errors and viruses, or purchasing one of several software applications available that track the status of individual files on computers. These applications are used to make sure that files are not being changed when they are not supposed to be. The applications inform the system administrator if a computer has been hacked, infected with a virus, has been restarted, or if the data files have been tampered with.

4.3.2. Application Security

These provisions apply to how all the HMIS data are secured by the HMIS application software.

Applicability. Baseline Requirement. A CHO must apply application security provisions to the software during data entry, storage and review or any other processing function.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements as needed.

User Authentication. Baseline Requirement. A CHO must secure all electronic HMIS data with, at a minimum, a user authentication system consisting of a username and a password. Passwords must be at least eight characters long and meet reasonable industry standard requirements. These requirements include, but are not limited to:

(1) Using at least one number and one letter;

(2) Using default passwords on initial entry into the HMIS application is allowed so long as the application requires that the default password be changed on first use;

(3) Not using, or including, the username, the HMIS name, or the HMIS vendor's name; and

(4) Not consisting entirely of any word found in the common dictionary or any of the above spelled backwards.

Written information specifically pertaining to user access (*e.g.*, username and password) may not be stored or displayed in any publicly accessible location. Individual users should not be able to log on to more than one workstation at a time, or be able to log on to the network at more than one location at a time.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by including one of each of the following kinds of characters in the password:

(1) Upper and lower-case letters;

(2) Numbers; and

(3) Symbols.

A common solution to creating complex passwords is to use phrases instead of individual words as passwords, capitalize each new word in the phrase and substitute numbers and symbols for letters in any given word. For example, the phrase ''secure password'' can be modified to ''$3cur3P@$$w0rd'' by replacing the letter ''s'' with ''$,'' the letter ''e'' with the number ''3,'' the letter ''a'' with ''@'' and the letter ''o'' with the number ''0,'' and eliminating spaces between words.

Electronic Data Transmission. Baseline Requirement. A CHO must encrypt all HMIS data that are electronically transmitted over the Internet, publicly accessible networks or phone lines to current industry standards. The current standard is 128-bit encryption. Unencrypted data may be transmitted over secure direct connections between two systems. A secure direct connection is one that can only be accessed by users who have been authenticated on at least one of the systems involved and does not utilize any tertiary systems to transmit the data. A secure network would have secure direct connections.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by using PKI certificates to verify the workstations involved in the electronic data transmission, and by restricting access between the workstations using IP addresses. A very secure system would not transmit any protected information over a public system like the Internet.

Electronic Data Storage. Baseline Requirement. A CHO must store all HMIS data in a binary, not text, format. A CHO that uses one of several common

applications (*e.g.*, Microsoft Access, Microsoft SQL Server and Oracle) are already storing data in binary format and no other steps need to be taken.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by requiring that all PPI be stored in an encrypted format using at least the current industry standard. The current standard is a 128-bit key.

4.3.3. Hard Copy Security

This section provides standards for securing hard copy data.

Applicability. Baseline Requirement. A CHO must secure any paper or other hard copy containing personal protected information that is either generated by or for HMIS, including, but not limited to reports, data entry forms and signed consent forms.

Additional Security Protections. A CHO may commit itself to additional security protections consistent with HMIS requirements by applying hard copy security provisions to paper and hard copy information that is not collected specifically for the HMIS.

Security. Baseline Requirement. A CHO must supervise at all times any paper or other hard copy generated by or for HMIS that contains PPI when the hard copy is in a public area. When CHO staff are not present, the information must be secured in areas that are not publicly accessible.

Written information specifically pertaining to user access (*e.g.*, username and password) must not be stored or displayed in any publicly accessible location.

5. Technical Standards

This section presents the technical standards that will be required for HMIS applications and for the organizations responsible for storing HMIS data. Except as otherwise provided, these standards do not specify or recommend any particular operating system, development environment, networking environment, database, hardware or other aspect of the HMIS application. This part of the Notice is primarily directed to HMIS developers and CoC system administrators.

5.1. Required HMIS Capabilities

5.1.1. Automatic Generation of Identification Numbers and Information

Based on the data collected through the client assessment process, program staff interviews, self-administered forms or review of case management records, the HMIS application must be capable of automatically generating data for each record. This capability includes the automatic generation of:

(1) Unique *Personal Identification Numbers (PINs)* for persons who have not been previously served within the CoC, and reassignment of PINs for persons who have been served previously within a program and/or the CoC;

(2) *Program Identification Information* that is uniquely associated with each program within a CoC and is assigned to every service episode for each client; and,

(3) *Household Identification Numbers* for persons who have been identified as members of a household that participated in the same service episode.

Personal Identification Numbers (PINs). A PIN is a number automatically generated by the HMIS application. All records associated with the same person should be assigned the same PIN. There is no required format for the PIN as long as there is a single unique PIN for every client served in the CoC and it contains no personally-identifying information. The PIN is used to produce an unduplicated count of all persons at three levels: (1) Within a single program; (2) across multiple programs that share HMIS data (where programs agree to share such data); and/or (3) across the entire CoC database, whether or not data are shared across programs within a CoC. At each level, an HMIS must be capable of searching client records to determine if clients have been previously served. The search must involve the matching of client records using personal identifier fields (*e.g.*, Name, Social Security Number, Date of Birth, and Gender) to retrieve a record(s) with identical or similar values in each of these fields.

Program Identification Information. Program identification information for every program offered in a CoC consists of the following four fields:

(1) Federal Information Processing Standards (FIPS) Code. To find the 10-digit FIPS code consisting of a 2-digit state code, 3-digit county code and 5-digit place code: (1) Go to Web site *http://geonames.usgs.gov/fips55.html;* (2) click on ''Search the FIPS55 Data Base;'' (3) click on state from ''State Number Code'' pull down menu (this also tells you 2-digit state code); (4) type town or city name in ''FIPS 55 Feature Name'' box; and (5) click on ''Send Query'' and 3-digit county code and 5-digit place code will be shown;

(2) Facility Code (to be locally determined);

(3) Continuum of Care (CoC) Code (HUD-assigned); and

(4) Program Type Code:

1 = Emergency shelter (*e.g.*, facility or vouchers)

2 = Transitional housing

3 = Permanent supportive housing

4 = Street outreach

5 = Homeless prevention (*e.g.*, security deposit or one month's rent)

6 = Services-only type of program

7 = Other

The FIPS code, facility code, CoC code and program type code should be separate fields in the HMIS application. There is no requirement to merge them into a single field. For each client intake program staff are only required to enter the program type code. Programs may choose to provide more detailed response categories for the services-only type program response. However, for reporting purposes, these detailed categories must be collapsed into a single service-only type category and its associated code.

A corresponding FIPS code, facility code and CoC code should be automatically generated by the HMIS based on which facility is doing the intake. Once program identification information has been created, the HMIS must ensure that the information is associated with every service episode recorded within the CoC.

Household Identification Numbers. HMIS must generate the same Household Identification Number for every person designated by program staff as being together for an episode of service. The household identification numbers assigned will be maintained in each person's permanent record and will be unique for each service episode experienced by the client.

As discussed in previous parts of this final Notice, when a group of persons apply for services together (as a household or family), information is first recorded for the household head who is applying for services and then information is recorded for any children under 18 years of age who are applying for services with the household head. The children do not need to be present at the time the household head applies for services. The same household identification number is assigned to the adult head of household and any children who have been identified as applying for services with the head. If there are other adult members of the household (over 18 years of age) who are reported to be part of this household, a separate intake is conducted. As part of this intake, this individual is assigned the same household identification number as the other household members.

5.1.2. Missing Value Categories

A limited number of data elements require ''don't know,'' ''not applicable'' and ''refused'' response categories for close-ended questions. These missing value categories and their associated codes should appear on the same list as the valid responses. For open-ended questions (*e.g.*, name), the HMIS application should include the ''don't know,'' ''not applicable'' and ''refused'' response categories for each field in the data element (*e.g.*, first name, last name, middle initial and suffix).

5.1.3. Other Response Categories

Certain data elements may contain a response category labeled ''other.'' When a data element contains such an option, there should also be within the same database table a separate alphanumeric field where the ''other'' value may be entered by program staff. For instance, a coded field that accepts the values ''0=Red,'' ''1=Yellow,'' or ''9=Other'' should have an accompanying field that accepts open-ended answers such as tangerine, blue or magenta.

5.1.4. Response Category Codes

Where character or numeric codes are shown next to each response category, only the character or numeric response code needs to be stored in the database. For example, ''1=Yes'' will be the response code on the computer screen or hard copy, but the electronic database can store ''1=Yes'' responses as ''1'' in the database. For open-ended or text answers (such as name), the full text answer or an encrypted version of it should be stored in the database.

5.1.5. Exit Dates

The HMIS should identify programs that have fixed lengths of enrollment. When a client enters such a program, the HMIS should automatically generate the exit date based on the entry date and the program's fixed length of enrollment. For example, an overnight emergency shelter has a fixed length of stay of one day. This information would be stored with the other program information like FIPS code and program code. When a client enrolls in an overnight emergency shelter, the HMIS will automatically set the client's exit date for the next day.

5.1.6. Maintaining Historical Data

An HMIS should have the ability to record client data from a limitless number of service transactions for longitudinal data analysis and assessment of client outcomes (often referred to as a ''transactional'' or ''relational'' database structure). A transactional or relational database organizes data within a set of tables from which data can be accessed or reassembled in many different ways without having to erase historical data or reorganize the database tables. For example, an HMIS may include a table that describes a client's demographic profile with columns for name, SSN, date of birth, gender, and so on. In most cases, the information in the profile table will not change. Another table may describe the client's income status: source of income, amount of income from each source, receipt of non-cash benefits, and so forth. The information in the income status table may change overtime, but all historical data should be preserved. Additional tables may include data from each service encounter by program type (*e.g.*, mental health and/or substance abuse).

5.1.7. Data Export

Although a standard environment is not specified, any HMIS application must be capable of exporting any and all data collected into a comma-separated values text file using the following format:

- All fields in a given record are separated by a comma;
- All records within a given text file contain the same fields;
- Blank fields are signified by the comma ending the previous field (or the beginning of the line if the field is the first in the record) followed by a comma indicating the end of the empty field;
- Fields containing text information (as opposed to numeric) will be surrounded by double quotes whenever the field includes blank spaces, commas, or other symbols not part of the standard alphabet;
- The first line of the file shall be a list of the field names included in every record in the file; and
- The list of field names shall be in the same format described above.

5.2. Continuum of Care Requirements

5.2.1. Storage Requirements

The CoC must have or designate a central coordinating body that will be responsible for centralized collection and storage of HMIS data.

HMIS data must be collected to a central location at least once a year from all HMIS users within the CoC.

HMIS data must be stored at the central location for a minimum of seven years after the date of collection by the central coordinating body or designee of the CoC. The seven-year requirement is the current government standard for health and medical information.

Environmental Impact

This notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: July 21, 2004.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 04–17097 Filed 7–29–04; 8:45 am]

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Federal Register

Friday,
July 30, 2004

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 129

Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 129

[Docket No. FAA–2004–17681; Amendment No. 91–283, 121–305, 125–46, 129–39]

RIN 2120–AI20

Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action extends the date for operators to comply with the special maintenance program requirements for transport airplane fuel tank systems. This extension is from December 6, 2004 to December 16, 2008. This action is necessary to allow operators enough time, after receipt of fuel tank systems maintenance programs from design approval holders, to incorporate necessary revisions into their maintenance programs.

Besides the compliance date extension, this rule includes an overview of the findings of the FAA's review of our Aging Airplane Program and the additional rulemaking projects we plan because of that review.

DATES: This final rule is effective July 30, 2004.

File comments on or before August 30, 2004.

ADDRESSES: You may send comments [identified by Docket Number FAA–2004–17681] using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: 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.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time. You can also go 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.

FOR FURTHER INFORMATION CONTACT: Mario L. Giordano, FAA, Aircraft Maintenance Division, Flight Standards Service, AFS–300, 800 Independence Avenue, SW., Washington DC 20591; telephone: (412) 262–9024 (x241); fax: (412) 264–9302, e-mail: *Mario.Giordano@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is adopting this final rule without prior notice and public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Therefore, we invite interested persons to take part in this rulemaking by filing any written data, views, or arguments they may wish. We also invite comments about environmental, energy, federalism, or international trade impacts that might result from this amendment.

As for the Aging Aircraft Program update, we are providing this mainly for informational purposes. As part of the normal rulemaking process, the public will have an opportunity to comment on the specifics of each proposal under the Aging Aircraft Program at the time we publish the applicable rulemaking documents. However, we also welcome any comments you may have on the general Aging Airplane Program update in this final rule.

For any comments about either the compliance date extension or the Aging Aircraft Program update, please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date. The docket number for this rule is FAA–2004–17681.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets. The available information includes the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule because of the comments received.

Commenters who want the FAA to acknowledge receiving their comments filed in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2004–17681.'' We will date-stamp the postcard and mail it to you.

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling 202–267–9680. Please include the docket number.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question about this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBRFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on

SBREFA, e-mail us *9-AWA-SBREFA@faa.gov.*

Background

General

The FAA developed the Aging Airplane Program to addresses structural and non-structural system safety issues that may arise as airplanes age and in response to:

(1) Airplanes being operated beyond their original design service goals;

(2) The 1988 Aloha B737 accident; and

(3) The Aging Airplane Safety Act of 1991.

To address the safety issues raised by the above events, the FAA developed four rulemaking projects. These projects became known collectively as the Aging Airplane Program and are:

(1) The Enhanced Airworthiness Program for Airplane Systems (Notice of Proposed Rulemaking in development);

(2) The Aging Airplane Safety Rule (Interim Final Rule issued on December 6, 2002);

(3) The Widespread Fatigue Damage Program (Notice of Proposed Rulemaking in development); and

(4) The Corrosion Prevention and Control Program (Notice of Proposed Rulemaking issued on October 3, 2002).

Besides the Aging Airplane Program, the FAA issued the Fuel Tank System Safety Rule (Final Rule) on April 19, 2001 in response to certain fuel tank system failures, including the 1996 TWA Flight 800 B747 accident. Since there are interactions between the operational rules of the Fuel Tank System Safety Rule and the rules of the Aging Airplane Program, we included it in the overall review of the Aging Airplane Program.

Review of Aging Airplane Program

The FAA recently performed a comprehensive review of the Aging Airplane Program. The goals of this review were to:

- Identify how to most effectively align the rulemaking initiatives to ensure there are no overlapping or redundant requirements;
- Ensure that design approval holder data supporting operator compliance is available on time; and,
- Ensure that the resulting maintenance requirements allow operators to be more efficient in revising their maintenance programs when addressing multiple, similar initiatives.

During this review, the FAA found that certain compliance dates in the existing rules and the pending rulemaking projects conflict. If not corrected, these conflicting dates would prevent operators from complying with the requirements efficiently during scheduled maintenance. In addition, this conflict would impact our ability to schedule oversight programs to coincide with the operators' scheduled maintenance.

Our review of the Aging Airplane Program also revealed that we need to make certain substantive changes to the focus of and language in some of the individual rulemaking projects. This action is necessary to improve the overall efficiency of the individual rulemaking projects and the Aging Airplane Program as a whole by ensuring that these projects work together.

The FAA expects that the realignment of the compliance dates and other aspects of the Aging Airplane Program will result in:

(1) Enhanced safety by causing inspections to be focused on the same area of an airplane at the same time and by reducing the need to disturb airplane systems repeatedly;

(2) Fewer service disruptions by reducing the number of times an airplane has to be removed from service to perform such inspections; and

(3) Significantly lower compliance costs for operators due to the efficiencies associated with performing multiple inspections at the same time.

To make the Aging Airplane Program realignment possible, the FAA is extending the compliance date for the Fuel Tank Safety operational rules from 2004 to 2008. We are also extending compliance with some aging-related operational rules from 2007 to 2010. The details of these extensions are discussed in more detail later in this rulemaking. However, we want to be clear that we are confident that these extensions will not have a negative impact on safety. The FAA remains committed to actively addressing all fuel tank and aging airplane safety concerns. In the last few years, we have created a safety net of actions that include more than 600 airworthiness directives (ADs) to address specific safety concerns, and several far-reaching initiatives to establish new safety standards for air carrier operations and airplanes. We will continue to use ADs to address any potential aging issues with specific aircraft. In addition, we will also continue to encourage industry to develop and implement programs that support compliance with the Aging Airplane Program initiatives.

First Action To Improve the Aging Airplane Program

During the Aging Airplane Program review, we recognized that the Fuel Tank Safety Rule compliance date of December 6, 2004 presented a problem. The operators need to start immediate action to meet the Fuel Tank Safety Rule requirements by this date but will have difficulty doing so for reasons discussed in more detail below. While the FAA intends to initiate a rulemaking to address those factors making compliance difficult, this rulemaking will not be in place by the existing compliance date. Therefore, we are taking action to correct this by extending the compliance date in this final rule.

This is the first rulemaking arising from the Aging Airplane Program review. While all the details about the FAA's new approach to the Aging Airplane Program are not developed fully, the FAA understands that industry is eager for information on this new approach. Therefore, we are including an overview of our findings and the additional rulemaking projects that we plan based on the Aging Airplane Program review in this final rule. As these projects develop, we may decide we need to make changes to some aspects of the individual projects described here. The rulemaking document for each project under the Aging Airplane Program will fully discuss our decisions and proposals for that project.

This final rule will first discuss the Fuel Tank Safety Rule compliance date extension. The overview about the Aging Airplane Program will immediately follow, starting in the section below entitled ''Review of Aging Airplane Program''.

Fuel Tank Safety Rule—Extending Compliance Dates

On April 19, 2001, the FAA issued a final rule entitled, ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). This discussion refers to this as the ''Fuel Tank Safety Rule.'' As stated above, there are interactions between the operational rules of the Fuel Tank Safety Rule and the Aging Airplane Program rules. Therefore, we included these operational rules in our review of the Aging Aircraft Program.

We issued the Fuel Tank Safety Rule to address unforeseen failure modes in fuel tank systems and the lack of specific maintenance procedures that could result in degrading the design safety features intended to preclude ignition of fuel tank vapors.

One part of the Fuel Tank Safety Rule, Special Federal Aviation Regulation (SFAR) 88, applies to design approval

holders (*i.e.*, manufacturers and other holders of supplemental type certificates) of certain turbine-powered transport category airplanes, and any person who modifies these airplanes later. SFAR 88 requires them to perform safety assessments to confirm if the design of the fuel tank system precludes the existence of ignition sources in the fuel tank system. SFAR 88 also requires developing design changes and maintenance and inspection instructions to assure the safety of the fuel tank system.

Other sections of the Fuel Tank Safety Rule (referred to as the ''operational rules'') requires operators of these airplanes to include fuel tank safety maintenance and inspection instructions in their existing maintenance programs. The requirements of these operational rules address two areas:

(1) The fuel tank systems of the ''baseline'' airplane (as originally made by the design approval holder); and

(2) The ''actual configuration'' of the fuel tank systems of each affected airplane (as modified or altered after original manufacture).

The FAA recognizes that operators will have difficulty meeting their obligations before the December 6, 2004 compliance date specified in 14 CFR 91.410(b), 121.370(b), 125.248(b) and 129.32(b) for the following four reasons:

(1) SFAR 88 requires design approval holders to perform complex analyses and to develop programs from those analyses. These safety analyses identified an unanticipated large number of potential ignition sources and safety features for which the design approval holders must develop associated maintenance and inspection tasks. The design approval holders have not yet fully developed these tasks. Consequently, operators cannot develop their maintenance and inspection instructions without this guidance and information from the design approval holders.

(2) When the FAA adopted SFAR 88, we provided guidance on how to perform safety assessments. However, this guidance was not specific enough to help design approval holders comply with the requirement to develop maintenance programs based on these assessments. Because this type of safety assessment had never been performed, we did not fully recognize the complexity of the assessments and their potential outcomes. In some cases, we could not have developed this guidance on maintenance programs until we had the results of the safety assessments.

(3) The FAA, the design approval holders and the operators did not share a common understanding of our requirements and expectations for developing these maintenance and inspection instructions.

(4) FAA's requirement that maintenance and inspection instructions address the actual configuration of the operators' airplanes resulted in confusion and difficulty among the operators. They did not know to what extent they needed to confirm the actual configuration of their airplanes, including repairs, alterations and modifications, or to evaluate their impact on the safety of the fuel tank system.

Based on the above, the FAA believes that it is not feasible to require compliance with the operational rules by the existing compliance date of December 6, 2004. The FAA considers an extension of this compliance date by about four years appropriate. We based this decision on (i) the scope of work still necessary to develop and set up the programs required by the Fuel Tank Safety Rule's operational rules, (ii) the goal of aligning the compliance dates in all the Aging Airplane Program rulemaking initiatives, and (iii) the effort required of both the FAA and industry to ensure compliance.

Therefore, the FAA is issuing this extension of time for the operating rules in the Fuel Tank Safety Rule immediately. This final rule extends the compliance dates for 14 CFR §§ 91.410(b), 121.370(b), 125.248(b) and 129.32(b), special maintenance program requirements from December 6, 2004 to December 16, 2008.

Extending the compliance dates does not affect the FAA's commitment to identify fuel tank system unsafe conditions and implement airworthiness directives to require corrective action. As described in the preamble of the Fuel Tank Safety Rule, the FAA intends to address unsafe conditions identified in the design holder assessments by issuing airworthiness directives to require corrective actions. Therefore, this extension will not delay correcting existing unsafe conditions. Rather, it will simply allow more time for operators to implement programs that will enable them to prevent other unsafe conditions from developing in the future.

Review of Aging Airplane Program

As discussed above, the FAA performed a comprehensive review of the Aging Airplane Program. Based on this review, the FAA has concluded that:

(1) We need to realign certain compliance dates in the existing rules and pending proposals to be more consistent; and

(2) We need to make certain substantive changes to the focus and direction of some of the individual rulemaking projects to ensure that these projects work together.

Therefore, the FAA has decided to revise the existing rules and pending proposals of the Aging Airplane Program accordingly and to align the compliance schedules as nearly as possible. Besides the extended compliance time adopted in this final rule, the FAA actions that will be affected by these revisions are:

(1) Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements Special Federal Aviation Regulation;

(2) Enhanced Airworthiness Program for Airplane Systems;

(3) Aging Airplane Safety Rule;

(4) Widespread Fatigue Damage Program; and

(5) Corrosion Prevention and Control Programs.

We intend to publish separate rulemaking documents soon for each of these actions. As part of the normal rulemaking process the public will have an opportunity to comment on the specifics of each proposal at the time we publish the applicable rulemaking documents. However, we also welcome comments you may have on the general Aging Airplane Program update in this document.

Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements

Besides the compliance date extension contained in this final rule, the FAA is considering revising the operational rules of the Fuel Tank Safety Rule to do the following:

(1) Limit the scope of the requirement to assess the ''actual configuration'' of fuel tank systems and identify clearly the configuration elements that directly affect fuel tank system safety;

(2) Clarify what changes the operators need to make to their maintenance programs;

(3) Clarify the roles and responsibilities of the principal airworthiness inspectors in reviewing and approving the incorporation of the operator's fuel system maintenance program; and

(4) Clarify other terminology.

The EAPAS proposal (discussed below) also affects fuel tank wiring issues. To prevent overlap or conflict with EAPAS, the FAA will propose

these changes as a part of that rulemaking.

As previously discussed, the design approval holders did not fully develop the maintenance and inspection tasks that would be used by the operators in making changes to their maintenance programs. Consequently, we will also issue guidance to help ensure the design approval holders are fully aware of what is necessary to show compliance with SFAR 88. We will base this guidance on feedback from both operators and design approval holders. We intend to contact all design approval holders and provide them with necessary information on our expectations for determining what maintenance and inspection tasks SFAR 88 requires and when they must provide these tasks. We will then work with them to ensure their full compliance. This will guarantee that operators have the documents they need to comply with the Fuel Tank Safety Rule's operational rules.

Overall, the FAA's guidance will include developing:

(1) A compliance plan;

(2) A means to oversee the progress towards compliance; and

(3) Possible actions we may take if the design holder does not comply.

Enhanced Airworthiness Program for Airplane Systems (EAPAS)

The FAA intends to develop an NPRM that addresses electrical wiring system malfunctions and wire contamination based on recommendations of the Aging Transport Systems Rulemaking Advisory Committee. Specifically, we are considering requiring design approval holders for transport category airplanes to make changes to existing Instructions for Continued Airworthiness to improve maintenance information for wiring systems. We are also considering requiring operators to incorporate these changes into their regular maintenance programs. We also intend to strengthen design requirements for wire systems by:

(1) Moving existing regulatory references to wiring into a single section of the regulations specifically for wiring; and

(2) Adding new certification rules to ensure the safety of wire systems.

Since the Fuel Tank Safety Rule and the EAPAS proposal have similar elements and operational requirements, we believe it is appropriate to combine the operational requirements of the two programs. This would preclude any redundancies that may currently exist between the two rulemakings if we were to issue them separately.

Aging Airplane Safety Rule

On December 6, 2002, the FAA published an interim final rule with request for comments, referred to as the ''Aging Airplane Safety Rule'' (67 FR 72726). This final rule requires airplanes used in air carrier operations to undergo inspections and records reviews by the Administrator or a designated representative. These inspections and reviews occur after the aircraft's 14th year in-service and at named intervals after that. These inspections and records reviews will ensure that operators maintain these airplanes' age-sensitive parts and components in an acceptable and timely manner.

This rule also bans operating these airplanes after specified deadlines unless operators include damage-tolerance-based inspections and procedures in their maintenance or inspection programs. The damage-tolerance-based inspections and procedures help to ensure the continued airworthiness of fatigue-sensitive parts and components of an airplane.

In this rule, the FAA stated that we continually seek to find ways to carry out our rules at lower cost without compromising safety and sought comments for that purpose. Industry responded to our request with many comments citing the adverse economic impact of the rule as currently written. We reviewed these comments and determined that changes to the rule would substantially reduce the burden on the industry without compromising the rule's safety objective. These changes would be in the area requiring damage tolerance based inspections and procedures. Specifically, we are considering limiting the applicability of these damage-tolerance requirements to airplanes initially type certificated with 30 or more passenger seats or a payload capacity of 7,500 pounds or more that are:

(1) Transport category airplanes operated by air carriers under 14 CFR Part 121; or

(2) U.S.-registered airplanes operated under 14 CFR Part 129.

The FAA also received many comments recommending that we task the Aviation Rulemaking Advisory Committee (ARAC) to establish guidelines for the development of damage tolerance programs that will support compliance with the rule. We agree with this recommendation and intend to task ARAC. Therefore, we are considering extending the compliance date stated in the final rule from December 5, 2007 to December 20, 2010. This will allow enough time for ARAC to perform this task and for operators to comply with the requirement to include damage tolerance-based inspections in their maintenance program.

The FAA also received comments about the Aging Airplane Safety Rule that sought direct participation by design approval holders to develop the required programs. Without this participation, the operators will have difficulty complying with the rule. Based on these comments, we are considering proposing a new rule to require design approval holders to develop damage tolerance programs that will support compliance with the rule.

We are addressing the comments to the interim final rule. We intend to publish a revised final rule soon. We also intend to publish an NPRM to propose the new requirements for design approval holders.

Widespread Fatigue Damage

The FAA intends to develop an NPRM to require incorporation into the FAA-approved maintenance program of a program to preclude widespread fatigue damage (WFD). This NPRM is based on recommendations from ARAC and results from the concern for the continued operational safety of airplanes that are approaching or have exceeded their expected service life. We are considering imposing a limit on the total flight cycles or hours. To operate an airplane beyond this limit, more inspections, modifications or replacement actions must be incorporated into the operator's maintenance program to preclude widespread fatigue damage. This proposal would ban continued operations unless operators accomplish such action.

This proposal is similar to the Aging Airplane Safety Rule. Complying with both of these operational requirements would depend on design approval holders developing the necessary data and documentation. Therefore, we are also considering proposing a new rule to require design approval holders to develop these data and documents.

Corrosion Prevention and Control Program

The Corrosion Prevention and Control Program (CPCP) NPRM, issued on October 3, 2002 (67 FR 62142), proposes to require that maintenance or inspection programs include FAA-approved corrosion prevention and control programs. This would apply to all airplanes operated under Part 121, all U.S. registered multi-engine airplanes operating under Part 129, and all multiengine airplanes used in scheduled operations under Part 135.

After considering the comments received, the FAA has determined that actions by the industry and the FAA may have made this proposal unnecessary. Therefore, we are considering withdrawing this NPRM.

New Approach for Requirements for Design Approval Holders

As identified in the preceding paragraphs, the FAA is considering proposing new rules to require design approval holders to develop the necessary data and documents to support the operator's compliance with each of the Aging Airplane Program rulemaking projects. As noted above in our discussion of the Fuel Tank Safety Rule, we implemented design holder requirements through a Special Federal Aviation Regulation (SFAR) to Part 21.

Since that rulemaking action, the FAA determined that for future operational rules where operators must rely on data or documents from design approval holders, we will mandate that the design approval holders' data or documents be developed by a specified date. For the Aging Airplane Program rulemaking projects and other future rulemaking actions related specifically to continued airworthiness, we decided that the requirements for the design approval holders will be included in a new subpart to Part 25, rather than in an SFAR. This approach will locate all requirements for design approval holders related to the continued airworthiness of transport category airplanes together in one place. We believe this will be a more efficient organization of those regulations.

The FAA plans to create the new subpart and modify the applicability of Part 25 to include requirements for design approval holders as well as applicants for Part 25 design approvals. We will propose those actions in the individual rulemaking documents.

Since the FAA has not previously included design holder continued airworthiness requirements in Part 25, we wanted to highlight this new approach for the public.

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Good Cause for "No Notice"

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

The FAA finds that notice and public comment on this final rule are impracticable. For the APA, "impracticable" means that, if notice and comment procedures were followed, they would defeat the purpose of the rule. As explained previously, the purpose of this final rule is to extend the compliance dates for the operational rules from December 6, 2004, to December 16, 2008. Coordinating and issuing rulemaking documents will take time under current procedures. We cannot issue a notice, receive comments, and issue a final rule before the current compliance date. The operators will also need several months before the compliance date to develop programs to comply with these requirements. Therefore, any delay in issuing this final rule would subject operators to confusion and the expense of trying to comply without the necessary documents from design approval holders. Therefore, it is "impracticable" to provide notice and opportunity to comment.

Good Cause for Immediate Adoption

Section 553(d)(1) allows an agency to make a rule effective immediately if it relieves a restriction. This avoids the 30-day delayed effective date requirement in section 553. Since this final rule relieves a restriction by extending compliance dates, it is effective on publication.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) bans agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards. Where suitable, the Trade Act directs agencies to use those international standards as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local, or tribal governments, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, the FAA determines that this rule:

(1) Has benefits which justify its costs and is not a "significant regulatory action" as defined in the Executive Order and as defined in DOT's Regulatory Policies and Procedures;

(2) Will not have a significant impact on a substantial number of small entities;

(3) Has minimal effects on international trade; and

(4) Does not impose an unfunded mandate on State, local or tribal governments or on the private sector.

Economic Summary

This rule extends the compliance time for operators to comply with the Fuel Tank Safety Rule. If the FAA left the original compliance date in place, some operators' maintenance programs would have been out of compliance. Those operators would have been subject to fines and they would have experienced maintenance schedule disruptions. With more time to comply, however, operators would be able to upgrade their maintenance manuals to incorporate the maintenance programs suggested by the design approval holders. Although we cannot provide a quantitative estimate of the losses resulting from the fines and maintenance schedule disruptions, we believe these would have been significant. Further, there will be a decrease in overall paperwork and costs if this rule has the same compliance date as the other aging aircraft rules. Having a common compliance date would allow operators to most efficiently set up their aging aircraft maintenance programs. Further, operators will be able to take more time to understand the new procedures and provide more training to their mechanics. Thus, we maintain that this

rule produces benefits and reduces costs.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 states:

''* * * as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.''

To achieve this principle, the Act requires agencies to seek and consider flexible regulatory proposals and to explain the reason for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

As this rule results in lower costs for all operators, the Administrator certifies the final rule is not expected to have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 bans Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The Act does not consider legitimate domestic objectives, such as safety, to be unnecessary obstacles. The statute also requires consideration of international standards and, where suitable, that they be the basis for U.S. standards. The FAA has assessed the potential affect of this action and determined that it will have only a domestic impact and, therefore, no affect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Section 202(a) (2 U.S.C. 1532) of Title II of the Act requires that each Federal agency, to the extent permitted by law, prepare a written statement assessing the affects of any Federal mandate in a proposed or final agency rule that may result in the 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 one year. The Act considers such a mandate to be a ''significant regulatory action.'' Section 203(a) of the Act (2 U.S.C. 1533) provides that before setting up any regulatory requirements that might significantly or uniquely affect small governments, an agency must have developed a plan under which the agency must:

(1) Provide notice of the requirements to potentially affected small governments, if any;

(2) Enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and,

(3) Inform, educate, and advise small governments on compliance with the requirements.

About the second requirement listed above, Section 204(a) of the Act (2 U.S.C. 1534) requires the Federal agency to develop an effective process to permit elected officers of State, local, and tribal governments (or their designees) to provide the input described.

This action does not contain a significant Federal intergovernmental or private sector mandate because it reduces the costs to operators. Therefore, the requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We therefore determined that this final rule does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to the following:

- Are the requirements in the regulation clearly stated?
- Does the regulation contain technical language or jargon that interferes with their clarity?
- Would the regulation be easier to understand if it was divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the regulation?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this final rule qualifies for a categorical exclusion.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Parts 91, and 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendments

■ Considering the foregoing, the Federal Aviation Administration amends Parts 91, 121, 125, and 129 of Title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 2. Amend § 91.410 by revising the first sentence of paragraph (b) to read as follows:

§ 91.410 Special maintenance program requirements.

* * * * *

(b) After December 16, 2008, no person may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958 and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload

capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated into its inspection program. * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 3. The authority citation for part 121 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 4. Amend § 121.370 by revising the first sentence of paragraph (b) to read as follows:

§ 121.370 Special maintenance program requirements.

* * * * *

(b) After December 16, 2008, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958 and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its maintenance program. * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 125 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 6. Amend § 125.248 by revising the first sentence of paragraph (b) to read as follows:

§ 125.248 Special maintenance program requirements.

* * * * *

(b) After December 16, 2008, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958 and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its inspection program. * * *

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 7. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

■ 8. Amend § 129.32 by revising the first sentence of paragraph (b) to read as follows:

§ 129.32 Special maintenance program requirements.

* * * * *

(b) For turbine-powered transport category airplanes with a type certificate issued after January 1, 1958 and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, the program required by paragraph (a) of this section must include instructions for maintenance and inspection of the fuel tank systems no later than December 16, 2008. * * *

Issued in Washington, DC, July 21, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–17188 Filed 7–28–04; 8:45 am]

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Federal Register

Friday,
July 30, 2004

Part IV

Environmental Protection Agency

40 CFR Parts 63 and 429

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 429

[OAR–2003–0048, FRL–7634–1]

RIN 2060–AG52

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products (PCWP) source category under the Clean Air Act (CAA) and revisions to the effluent limitations, guidelines and standards for the timber products processing source category under the Clean Water Act (CWA).

The EPA has determined that the PCWP source category contains major sources of hazardous air pollutants (HAP), including, but not limited to, acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. These HAP are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, damage to nasal membranes, gastrointestinal irritation) and acute health disorders (*e.g.*, irritation of eyes, throat, and mucous membranes, dizziness, headache, and nausea). Three of the six primary HAP emitted have been classified as probable or possible human carcinogens. This action will implement section 112(d) of the CAA by requiring all major sources subject to the final rule to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The final rule will reduce HAP emissions from the PCWP source category by approximately 5,900 to 9,900 megagrams per year (Mg/yr) (6,600 to 11,000 tons per year (tons/yr)). In addition, the final rule will reduce emissions of volatile organic compounds (VOC) by 13,000 to 25,000 Mg/yr (14,000 to 27,000 tons/yr).

The EPA is also amending the effluent limitations, guidelines and standards for the timber products processing point source category (veneer, plywood, dry process hardboard, particleboard manufacturing subcategories). The amendments adjust the definition of process wastewater to exclude certain sources of wastewater generated by air pollution control devices expected to be installed to comply with the final PCWP NESHAP.

The EPA is also amending the list of categories that was developed pursuant to section 112(c)(1) of the CAA. The EPA is delisting a low-risk subcategory of the PCWP source category. This action is being taken in part to respond to comments submitted by the American Forest & Paper Association (AF&PA) and in part upon the Administrator's own motion, pursuant to section 112(c)(9) of the CAA. This action is based on EPA's evaluation of the available information concerning the potential hazards from exposure to HAP emitted by PCWP affected sources, and includes a detailed rationale for removing low-risk PCWP affected sources from the source category list.

DATES: The final NESHAP and the amendments to the effluent guidelines are effective September 28, 2004. The incorporation by reference of certain publications listed in the final NESHAP is approved by the director of the Office of the Federal Register as of September 28, 2004.

ADDRESSES: Docket numbers OAR–2003–0048 and A–98–44, containing supporting documentation used in development of this action, are available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460. These dockets also contain documentation supporting the amendments to 40 CFR part 429.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in 40 CFR 63.13. For information concerning the analyses performed in developing the final rule, contact Ms. Mary Tom Kissell, Waste and Chemical Processes Group, Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4516, electronic mail (e-mail) address *kissell.mary@epa.gov.* For information concerning test methods, sampling, and monitoring information, contact Mr. Gary McAlister, Source Measurement Analysis Group, Emission Monitoring and Analysis Division (D243–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1062, e-mail address *mcalister.gary@epa.gov.* For information concerning the economic impacts and benefit analysis, contact Mr. Larry Sorrels, Innovative Strategies and Economics Group, Air Quality Strategies and Standards Division (C339–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5041, e-mail address *sorrels.larry@epa.gov.* For information concerning the effluent guidelines, contact Mr. Donald Anderson, Engineering and Analysis Division (4303T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number (202) 566–1021, *anderson.donaldf@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	Rule	SIC code [a]	NAICS code [b]	Examples of regulated entities
Industry	NESHAP	2421	321999	Sawmills with lumber kilns.
		2435	321211	Hardwood plywood and veneer plants.
		2436	321212	Softwood plywood and veneer plants.
		2493	321219	Reconstituted wood products (particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard plants).
		2439	321213	Structural Wood Members, Not Elsewhere Classified (engineered wood products plants).
Effluent Guidelines		2436	321212	Softwood plywood and veneer plants.
		2493	321219	Reconstituted wood products (particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard plants).

[a] Standard Industrial Classification.
[b] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2231 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action including both Docket ID No. OAR–2003–0048 and Docket ID No. A–98–44. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to this rule. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. You may also access a copy of this document through the Technology Transfer Network (TTN) at *http://www.epa.gov/ttn/atw/plypart/plywoodpg.html*. 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 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.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the standards and limitations 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 September 28, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Under section 509(b)(1) of the CWA, judicial review of today's effluent limitations guidelines and standards is available in the United States Court of Appeals by filing a petition for review within 120 days from the date of promulgation of those guidelines and standards. In accordance with 40 CFR 23.2, the water portion of today's final rule shall be considered promulgated for the purposes of judicial review at 1 p.m. Eastern time on August 13, 2004. Moreover, under section 307(b)(2) of the CAA and section 509(b)(2) of the CWA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce the requirements.

Outline. The information presented in this preamble is organized as follows:

I. Introduction
A. What Is the Source of Authority for Development of Today's Regulations?
B. What Criteria Are Used in the Development of NESHAP?
C. How Was the Final Rule Developed?
D. What Are the Health Effects of the Pollutants Emitted From the PCWP Industry?
E. Incorporation by Reference of NCASI Test Methods
F. Incorporation by Reference of ASTM Test Method
II. Summary of the Final Rule
A. What Process Units Are Subject to the Final Rule?
B. What Pollutants Are Regulated by the Final Rule?
C. What Are the Compliance Options?
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B. Overlap With Other Rules
C. Amendments to the Effluent Guidelines for Timber Products Processing
D. Existing Source MACT
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F. Definition of Control Device
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H. Testing and Monitoring Requirements
I. Routine Control Device Maintenance Exemption (RCDME)
J. Startup, Shutdown, and Malfunction (SSM)
K. Risk-Based Approaches
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis
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 & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Introduction

A. What Is the Source of Authority for Development of Today's Regulations?

Section 112(c) 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 PCWP source category was originally listed as the plywood and particleboard source category on July 16, 1992 (57 FR 31576). The name of the source category was changed to plywood and composite wood products on November 18, 1999 (64 FR 63025), to more accurately reflect the types of manufacturing facilities covered by the source category. In addition, when we proposed the PCWP rule on January 9, 2003 (68 FR 1276), we broadened the scope of the source category to include lumber kilns located at stand-alone kiln-dried lumber manufacturing facilities or at any other type of facility. Major sources of HAP are those that have the potential to emit 9.1 Mg/yr (10 tons/yr) or more of any one HAP or 22.3 Mg/yr (25 tons/yr) or more of any combination of HAP.

Section 112(d) of the CAA directs us to adopt emission standards for

categories and subcategories of HAP sources. In cases where emission standards are not feasible, section 112(h) of the CAA allows us to develop design, equipment, work practice, and/or operational standards. The collection of compliance options, operating requirements, and work practice requirements in today's final rule make up the emission standards and work practice standards for the PCWP NESHAP.

We are promulgating the amendments to 40 CFR part 429 under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the CWA.

Section 112(c)(9) of the CAA allows us to delete categories and subcategories from the list of HAP sources to be subject to MACT standards under section 112(d) of the CAA, if certain substantive criteria are met. (The EPA construes this authority to apply to listed subcategories because doing so is logical in the context of the general regulatory scheme established by the statute, and is reasonable since section 112(c)(9)(B)(ii) expressly refers to subcategories.) To delete a category or subcategory the Administrator must make an initial demonstration that no source in the category or subcategory: (1) Emits carcinogens in amounts that may result in a lifetime cancer risk exceeding one in a million to the individual most exposed; (2) emits noncarcinogens in amounts that exceed a level which is adequate to provide an ample margin of safety to protect public health; and (3) emits any HAP or combination of HAP in amounts that will result in an adverse environmental effect, as defined by section 112(a)(7) of the CAA.

B. What Criteria Are Used in the Development of NESHAP?

Section 112(d)(1) of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. Section 112(d)(2) of 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 ensures that all major sources achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT under section 112(d)(2) of the CAA, we must also consider any control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. How Was the Final Rule Developed?

We proposed standards for PCWP on January 9, 2003 (68 FR 1276). The preamble for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. The public comment period lasted from January 9, 2003, to March 10, 2003. Industry representatives, regulatory agencies, environmental groups, and the general public were given the opportunity to comment on the proposed rule and to provide additional information during the public comment period. We also offered at proposal the opportunity for a public hearing concerning the proposed rule, but no hearing was requested. We met with stakeholders on several occasions.

We received a total of 57 public comment letters on the proposed rule during the comment period. Comments were submitted by industry trade associations, PCWP companies, State regulatory agencies, local government agencies, and environmental groups. Today's final rule reflects our consideration of all of the comments received during the comment period. Major public comments on the proposed rule, along with our responses to those comments, are summarized in this preamble.

D. What Are the Health Effects of the Pollutants Emitted From the PCWP Industry?

The final rule protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. The organic HAP from PCWP process units that have been detected in one or more emission tests include acetaldehyde, acetophenone, acrolein, benzene, biphenyl, bromomethane, carbon disulfide, carbon tetrachloride, chloroform, chloroethane, chloromethane, cresols, cumene, ethyl benzene, formaldehyde, hydroquinone methanol, methylene chloride, methylene diphenyl diisocyanate (MDI), methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), n-hexane, phenol, propionaldehyde, styrene, toluene, xylenes, 1,1,1-trichloroethane, bis-(2-ethylhexyl phthalate), 4-methyl-2-pentanone, and di-n-butyl phthalate. Many of these HAP are rarely detected and occur infrequently. The predominant organic HAP emitted (*i.e.,* those most likely to be emitted in detectable quantities and with high mass relative to other HAP) by PCWP facilities include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. Exposure to these compounds has been demonstrated to cause adverse health effects when present in concentrations higher than those typically found in ambient air. This section discusses the health effects associated with the predominant HAP emitted by the PCWP industry, as well as the health effects of the HAP contributing the most to cancer and noncancer risks associated with these PCWP facilities (organic HAP and some metal HAP) that must be included in any demonstration of eligibility for the low-risk subcategory of PCWP sources.

We do not have the necessary data on each PCWP facility and the people living around each facility to determine the actual population exposures to the HAP emitted from these facilities and the potential health effects. Our screening assessment, conducted using health-protective assumptions, indicates that potential noncancer health impacts were negligible to target organ systems other than the central nervous and respiratory systems. Furthermore, only acrolein and formaldehyde showed the potential for acute exposures of any concern. Therefore, noncancer effects other than those effecting the central nervous or respiratory systems are not expected to occur prior to or after regulation, and are provided below only to illustrate the nature of the contaminant's effects at high dose. However, to the extent the adverse effects do occur, today's final rule would reduce emissions by sources subject to the standards and subsequent exposures to such emissions.

1. Acetaldehyde

Acetaldehyde is ubiquitous in the environment and may be formed in the body from the breakdown of ethanol (ethyl alcohol). In humans, symptoms of chronic (long-term) exposure to

acetaldehyde resemble those of alcoholism. Long-term inhalation exposure studies in animals reported effects on the nasal epithelium and mucous membranes, growth retardation, and increased kidney weight. We have classified acetaldehyde as a probable human carcinogen (Group B2) based on animal studies that have shown nasal tumors in rats and laryngeal tumors in hamsters.

2. Acrolein

Acute (short-term) inhalation exposure to acrolein may result in upper respiratory tract irritation and congestion. The major effects from chronic (long-term) inhalation exposure to acrolein in humans consist of general respiratory congestion and eye, nose, and throat irritation. Acrolein is a strong dermal irritant in humans. We consider acrolein to be a possible human carcinogen (Group C) based on limited animal cancer data suggesting an increased incidence of tumors in rats exposed to acrolein in the drinking water.

3. Formaldehyde

Both acute (short-term) and chronic (long-term) exposure to formaldehyde irritates the eyes, nose, and throat. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. We consider formaldehyde a probable human carcinogen (Group B2).

4. Methanol

Chronic (long-term) exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to high concentrations of methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. We have not classified methanol with respect to carcinogenicity.

5. Phenol

Oral exposure to small amounts of phenol may cause irregular breathing and muscular weakness. Anorexia, progressive weight loss, diarrhea, vertigo, salivation, and a dark coloration of the urine have been reported in chronically (long-term) exposed humans. Gastrointestinal irritation and blood and liver effects have also been reported. No studies of developmental or reproductive effects of phenol in humans are available, but animal studies have reported reduced fetal body weights, growth retardation, and abnormal development in the offspring of animals exposed to relatively high doses of phenol by the oral route. We have classified phenol in Group D, not classifiable as to human carcinogenicity.

6. Propionaldehyde

Animal studies have reported that inhalation exposure to high levels of propionaldehyde results in anesthesia and liver damage. No information is available on the chronic (long-term), reproductive, developmental, or carcinogenic effects of propionaldehyde in animals or humans. We have not classified propionaldehyde for carcinogenicity.

7. Arsenic

Chronic (long-term) inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Human data suggest a relationship between inhalation exposure of women working at or living near metal smelters and an increased risk of reproductive effects. Inorganic arsenic exposure in humans by the inhalation route has been shown to be strongly associated with lung cancer. We have classified inorganic arsenic as a Group A, human carcinogen.

8. Beryllium

Chronic (long-term) inhalation exposure of humans to beryllium has been reported to cause chronic beryllium disease (berylliosis), in which granulomatous (noncancerous) lesions develop in the lung. Inhalation exposure to beryllium has been demonstrated to cause lung cancer in rats and monkeys. Human studies are limited, but suggest a causal relationship between beryllium exposure and an increased risk of lung cancer. We have classified beryllium as a Group B1, probable human carcinogen, when inhaled; data are inadequate to determine whether beryllium is carcinogenic when ingested.

9. Cadmium

Chronic (long-term) inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys that can cause kidney disease. Cadmium has been shown to be a developmental toxicant at high doses in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium. We have classified cadmium as a Group B1, probable human carcinogen when inhaled; data are inadequate to determine whether cadmium is carcinogenic when ingested.

10. Chromium

Chromium may be emitted from PCWP facilities in two forms, trivalent chromium (chromium III) or hexavalent chromium (chromium VI). The respiratory tract is the major target organ for chromium VI toxicity. Bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects have been noted from chronic high concentration exposure. Limited human studies suggest that chromium VI inhalation exposure may be associated with complications during pregnancy and childbirth, while animal studies have not reported reproductive effects from inhalation exposure to chromium VI. Human and animal studies have clearly established that inhaled chromium VI is a carcinogen, resulting in an increased risk of lung cancer. We have classified chromium VI as a Group A, human carcinogen by the inhalation exposure route.

Chromium III is much less toxic than chromium VI. The respiratory tract is also the major target organ for chromium III toxicity, similar to chromium VI. Chromium III is an essential element in humans, with a daily oral intake of 50 to 200 micrograms per day (μg/d) recommended for an adult. Data on adverse effects of high oral exposures of chromium III are not available for humans, but a study with mice suggests possible damage to the male reproductive tract. We have not classified chromium III for carcinogenicity.

11. Manganese

Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic (long-term) exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day (mg/d). Chronic inhalation exposure to high levels of manganese by inhalation in humans results primarily in central nervous system (CNS) effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Impotence and loss of libido have been noted in male workers afflicted with manganism

attributed to high-dose inhalation exposures. We have classified manganese as Group D, not classifiable as to human carcinogenicity.

12. Nickel

Nickel is an essential element in some animal species, and it has been suggested it may be essential for human nutrition. Nickel dermatitis, consisting of itching of the fingers, hands, and forearms, is the most common effect in humans from chronic (long-term) skin contact with nickel. Respiratory effects have also been reported in humans from inhalation exposure to nickel. No information is available regarding the reproductive or developmental effects of nickel in humans, but animal studies have reported such effects, although a consistent dose-response relationship has not been seen. The forms of nickel which might be emitted from PCWP facilities include soluble nickel, nickel subsulfide, and nickel carbonyl. We have classified nickel refinery dust and nickel subsulfide as Group A, human carcinogens, and nickel carbonyl as a Group B2, probable human carcinogen, by inhalation exposure. Human and animal studies have reported an increased risk of lung and nasal cancers from exposure to nickel refinery dusts and nickel subsulfide. Animal inhalation studies of soluble nickel compounds (*i.e.*, nickel carbonyl) have reported lung tumors.

13. Lead

Elemental lead may cause a variety of effects at low oral or inhaled dose levels. Chronic (long-term) exposure to high levels of lead in humans results in effects on the blood, CNS, blood pressure, and kidneys. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth, and other effects reported. Reproductive effects, such as decreased sperm count in men and spontaneous abortions in women, have been associated with lead exposure. The developing fetus is at particular risk from maternal lead exposure, with low birth weight and slowed postnatal neurobehavioral development noted. Human studies are inconclusive regarding lead exposure and cancer, while animal studies have reported an increase in kidney cancer from lead exposure by the oral route. We have classified lead as a Group B2, probable human carcinogen.

14. MDI

The MDI has been observed to irritate the skin and eyes of rabbits. Chronic (long-term) inhalation exposure to MDI may cause asthma, dyspnea, and other respiratory impairments in workers. We have classified MDI within Group D, not classifiable as to human carcinogenicity.

15. Benzene

Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. We have classified benzene as a Group A, known human carcinogen.

E. Incorporation by Reference of NCASI Test Methods

Today's final rule amends 40 CFR 63.14 by revising paragraph (f) to incorporate by reference two test methods developed by the National Council of the Paper Industry for Air and Stream Improvement (NCASI): (1) Method CI/WP–98.01, ''Chilled Impinger Method for Use at Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol'; and (2) NCASI Method IM/CAN/WP–99.02, ''Impinger/Canister Source Sampling Method for Selected HAPs and Other Compounds at Wood Products Facilities.'' These methods are available from NCASI, Methods Manual, P.O. Box 133318, Research Triangle Park, NC 27709–3318 or at *http://www.ncasi.org.* They are also available from the docket for the final rule (Docket Number OAR–2003–0048 and Docket Number A–98–44). These documents were approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

F. Incorporation by Reference of ASTM Test Method

Today's final rule amends 40 CFR 63.14 by adding paragraph (b)(54) to incorporate by reference a test method developed by the American Society for Testing and Materials (ASTM), ASTM D6348–03, ''Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy.'' This test method is available from ASTM, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106. This document has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR 51.

II. Summary of the Final Rule

A. What Process Units Are Subject to the Final Rule?

The final rule regulates HAP emissions from PCWP facilities that are major sources. Plywood and composite wood products are manufactured by bonding wood material (fibers, particles, strands, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include (but are not limited to) plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams. Table 1 of this preamble lists the process units at PCWP facilities and indicates which process units are subject to the control requirements in today's final rule. ''Process unit'' means equipment classified according to its function such as a blender, dryer, press, former, or board cooler.

The affected source for the final rule is the combination of all PCWP manufacturing operations, including PCWP process units, onsite storage of raw materials, onsite wastewater treatment operations associated with PCWP manufacturing, and miscellaneous coating operations located at a major source facility. One of the implications of this definition of affected source is that the control requirements, or ''floor,'' as defined in section 112(d)(3), are determined for the entire PCWP facility. Therefore, except for lumber kilns not otherwise located at PCWP facilities, the final rule contains the control requirements that represent the MACT level of control for the entire facility. For lumber kilns not otherwise located at PCWP facilities, the final rule contains the control requirements that represent the MACT level of control only for lumber kilns.

TABLE 1.—PROCESS UNITS THAT ARE SUBJECT TO THE FINAL CONTROL REQUIREMENTS

For the following process units . . .	Does today's final rule include control requirements for . . .	
	Existing affected sources?	New affected sources?
Softwood veneer dryers [a]; primary tube dryers; secondary tube dryers; rotary strand dryers; conveyor strand dryers; green rotary dryers; hardboard ovens; reconstituted wood product presses; and pressurized refiners.	Yes.	Yes.
Press predryers; fiberboard mat dryers; and board coolers	No.	Yes.
Dry rotary dryers [a]; veneer redryers [a]; softwood plywood presses; hardwood plywood presses; engineered wood products presses; hardwood veneer dryers [a]; humidifiers; atmospheric refiners; formers; blenders; rotary agricultural fiber dryers; agricultural fiber board presses; sanders; saws; fiber washers; chippers; log vats; lumber kilns; storage tanks; wastewater operations; miscellaneous coating operations (including group 1 miscellaneous coating operations [a]); and stand-alone digesters.	No.	No.

[a] These process units have work practice requirements in today's final rule in addition to or instead of control requirements. Group 1 miscellaneous coating operations include application of edge seals, nail lines, logo (or other information) paint, shelving edge fillers, trademark/grade-stamp inks, and wood putty patches to PCWP (except kiln-dried lumber) on the same site where the PCWP are manufactured. Group 1 miscellaneous coating operations also include application of synthetic patches to plywood at new affected sources.

B. What Pollutants Are Regulated by the Final Rule?

The final rule regulates HAP emissions from PCWP facilities. For the purpose of compliance with 40 CFR part 63, subpart DDDD, we defined ''total HAP'' to be the sum of the emissions of six primary HAP emitted from PCWP manufacturing. The six HAP that define total HAP make up 96 percent of the nationwide HAP emissions from PCWP facilities and are acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. Other HAP are sometimes emitted and controlled along with these six HAP, but in lower quantities. Depending upon which of the compliance alternatives you choose, you could be required to measure emissions of total HAP, total hydrocarbon (THC), methanol, or formaldehyde as surrogates for measuring all HAP. For the purpose of determining whether your facility is a major source, you would have to include all HAP as prescribed by rules and guidance pertaining to determination of major source.

C. What Are the Compliance Options?

Today's final rule includes a range of compliance options, which are summarized in the following subsections. You must use one of the compliance options to show compliance with the final rule. In most cases, the compliance options are the same for new and existing sources. Dilution to achieve compliance is prohibited, as specified in 40 CFR 63.4.

1. Production-Based Compliance Options

Today's final rule includes production-based compliance options (PBCO), which are based on total HAP and vary according to type of process unit. Total HAP emissions are defined in today's final rule as the total mass emissions of the following six HAP: acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The PBCO are in units of mass of pollutant per unit of production. Add-on control systems may not be used to meet the production-based compliance options. For pressurized refiners and most dryers, the PBCO are expressed as pounds per oven-dried-ton of wood (lb/ODT). For presses, hardboard ovens, and some dryers, the PBCO are expressed as pounds per thousand square feet of board (lb/MSF), with a reference board thickness. There is no PBCO for conveyor strand dryers.

2. Add-On Control System Compliance Options

If you operate a process unit equipped with an add-on control system, you may use any one of the following six compliance options. ''Add-on control system'' or ''control system'' means the combination of capture and control devices used to reduce HAP emissions to the atmosphere.

(1) Reduce THC emissions (as carbon, and minus methane if you wish to subtract methane) by 90 percent.

(2) Reduce methanol emissions by 90 percent.

(3) Reduce formaldehyde emissions by 90 percent.

(4) Limit the concentration of THC (as carbon, and minus methane if you wish to subtract methane) in the outlet of the add-on control system to 20 parts per million by volume, dry basis (ppmvd).

(5) Limit the concentration of methanol in the exhaust from the add-on control system to 1 ppmvd (can be used only if the concentration of methanol entering the control device is greater than or equal to 10 ppmvd).

(6) Limit the concentration of formaldehyde in the exhaust from the add-on control system to 1 ppmvd (can be used only if the concentration of formaldehyde entering the control device is greater than or equal to 10 ppmvd).

In the first three options ((1) through (3)), the 90 percent control efficiency represents a total control efficiency. Total control efficiency is defined as the product of the capture efficiency and the control device efficiency. For process units such as rotary strand dryers, capture efficiency is not an issue because the rotary strand dryer has a single exhaust point which is easily captured by the control device. However, for presses and board coolers, the HAP emissions cannot be completely captured without installing an enclosure. If the enclosure meets the criteria for a wood products enclosure as defined in § 63.2292 in today's final rule, then you would assign the enclosure a capture efficiency of 100 percent. You must test other enclosures to determine capture efficiency using EPA Test Methods 204 and 204A through 204F (as appropriate) found in 40 CFR part 51, appendix M, or the alternative tracer gas procedure in appendix A to today's final rule. For the three concentration options ((4) through (6)), you must have an enclosure that either meets the criteria for a wood products enclosure or achieves a capture efficiency greater than or equal to 95 percent.

The six compliance options are equivalent ways to express the HAP control levels that represent the MACT floor. Because the compliance options are equivalent for controlling HAP emissions, you are required to meet only

one of the six compliance options for add-on control systems. However, you must designate in your permit which one of the six options you have selected for the affected process unit. If you plan to operate a given process unit under different conditions, you may incorporate multiple compliance options for the add-on control system into your permit, as long as each separate operating condition is identified along with the compliance option that corresponds to that operating condition.

3. Emissions Averaging Compliance Option

Emissions averaging is a means of achieving the required emissions reductions in a less costly way. Therefore, if you operate an existing affected source, for each process unit you could choose to comply with the emissions averaging provisions instead of the production-based compliance options or add-on control system compliance options.

Emissions averaging is a system of debits and credits in which the credits must equal or exceed the debits. ''Debit-generating process units'' are the PCWP process units that are required to meet the control requirements but that you choose to either not control or under-control. ''Credit-generating process units'' are the PCWP process units that you choose to control that are not required to be controlled under the standards. When determining your actual mass removal (AMR) of HAP, you may include partial credits generated from debit-generating process units that are under-controlled (*e.g.,* you may receive credit for 25 percent control of a debit-generating process unit). Control devices used for credit-generating process units may not be assigned more than 90 percent control efficiency.

Under the emissions averaging provisions, you would determine the required mass removal (RMR) of total HAP from debit-generating process units for a 6-month compliance period. Total HAP is defined in today's final rule to include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The RMR would be based on initial total HAP measurements for each debit-generating process unit, your process unit operating hours for a 6-month period, and the required 90 percent control system efficiency. One hundred percent of the RMR for debit-generating process units would have to be achieved or exceeded by the AMR of total HAP achieved by credit-generating process units. The AMR is determined based on initial performance tests, the total HAP removal efficiency (not to exceed 90 percent) of the control systems used to control the credit-generating process units, and your process unit operating hours over the 6-month period.

There are some restrictions on use of the emissions averaging provisions in today's final rule. You must limit emissions averaging to the process units located within your affected source. Emissions averaging may not be used at new affected sources. You may not include in an emissions average those process units that are not operating or that are shut down. Only PCWP process units using add-on control systems may be used to generate credits.

D. What Operating Requirements Are in the Final Rule?

The operating requirements in today's final rule apply to add-on control systems used to comply with the final rule and to process units meeting the final production-based compliance options or emissions averaging provisions without an add-on control device (*e.g.*, debit-generating process units). For incineration-based control devices and biofilters, the final rule specifies that you must either monitor operating parameters or use a THC continuous emission monitoring system (CEMS) to demonstrate continuous compliance. The final operating requirements are summarized below:

- If you operate a thermal oxidizer, such as a regenerative thermal oxidizer (RTO), you must maintain the firebox temperature at a level that is greater than or equal to the minimum temperature established during the performance test. If you operate a combustion unit that accepts process exhaust into the flame zone, you are exempt from the testing and monitoring requirements described above for thermal oxidizers.
- If you operate a catalytic oxidizer, such as a regenerative catalytic oxidizer (RCO) or thermal catalytic oxidizer (TCO), you must maintain the average catalytic oxidizer temperature at or above the minimum temperature established during the performance test. You must also check the activity level of a representative sample of the catalyst at least every 12 months.
- If you operate a biofilter, you must maintain the average biofilter bed temperature within the range you develop during the initial performance test or during qualifying previous performance tests using the required test methods. If you use values from previous performance tests to establish the operating parameter ranges, you must certify that the biofilter and associated process unit(s) have not been modified subsequent to the date of the performance tests.
- If you operate an add-on control system not listed in today's final rule, you must establish operating parameters to be monitored and parameter values that represent your operating requirements during the performance test, subject to prior written approval by the Administrator.
- If you operate a process unit that meets the production-based compliance options or a process unit that generates debits in an emissions average without an add-on control device, you must maintain on a daily basis the process unit controlling operating parameter(s) within the ranges established during the performance test corresponding to the representative operating conditions identified during the performance test.
- As an alternative to monitoring the operating parameters specified above for thermal oxidizers, catalytic oxidizers, biofilters, other control devices, and process units that meet compliance options without add-on control systems, you may monitor THC concentration in the outlet stack with a THC CEMS. If you select this option, you must maintain the outlet THC concentration below the maximum concentration established during the performance test. You may choose to subtract methane from the THC concentration measured by the CEMS if you wish to do so.

E. What Are the Work Practice Requirements?

The work practice requirements in today's final rule apply to softwood veneer dryers, dry rotary dryers, veneer redryers, hardwood veneer dryers, and group 1 miscellaneous coating operations. For softwood veneer dryers, the work practice requirements require you to minimize fugitive emissions from the veneer dryer doors (by applying appropriate operation and maintenance procedures) and from the green end of the dryers (through proper balancing of hot zone exhausts). For group 1 miscellaneous coating operations, the work practice requirements specify that you must use a non-HAP coating. The work practice requirements also specify parameters that you must monitor to demonstrate that each dry rotary dryer, veneer redryer, and hardwood veneer dryer continuously operates in a manner consistent with the definitions of these process units provided in today's final rule, as follows:

- If you operate a dry rotary dryer, you must maintain the inlet dryer temperature at or below 600°F and maintain the moisture content of the wood particles entering the dryer at or below 30 weight percent, on a dry basis.

• If you operate a veneer redryer, you must maintain the moisture content of the wood veneer entering the dryer at or below 25 percent, by weight.

• If you operate a hardwood veneer dryer, you must process less than 30 percent, by volume, softwood species each year.

F. When Must I Comply With the Final Rule?

Existing PCWP facilities must comply within 3 years of September 28, 2004. New sources that commence construction after January 9, 2003, must comply immediately upon initial startup or on September 28, 2004, whichever is later.

Existing sources that wish to be included in the delisted low-risk subcategory must receive EPA approval of their eligibility demonstrations no later than 3 years after September 28, 2004, or be in compliance with the final rule. New sources that wish to be included in the delisted low-risk subcategory must receive EPA approval of their eligibility demonstrations no later than initial startup or on September 28, 2004, which ever is later, or be in compliance with the final rule.

G. How Do I Demonstrate Initial Compliance With the Final Rule?

The initial compliance requirements in today's final rule vary with the different compliance options.

1. Production-Based Compliance Options

If you are complying with the PBCO in today's final rule, you must conduct an initial performance test using specified test methods to demonstrate initial compliance. You must test the efficiency of your emissions capture device during the initial performance test if the process unit is a press or board cooler. The actual emission rate of the press or board cooler is equivalent to the measured emissions divided by the capture efficiency. You must test prior to any wet control device operated on the process unit. During the performance test, you must identify the process unit controlling parameter(s) that affect total HAP emissions; these parameters must coincide with the representative operating conditions you describe in the performance test. For each parameter, you must specify appropriate monitoring methods and monitoring frequencies, and for continuously monitored parameters, you must specify averaging times not to exceed 24 hours. You must install process monitoring equipment or establish recordkeeping procedures to be used to demonstrate compliance with the operating requirements for the parameters you select. During the initial performance test, you must use the process monitoring equipment or recordkeeping procedures to establish the parameter value (e.g., maximum, minimum, average, or range, as appropriate) that represents your operating requirement for the process unit. Alternatively, you may install a THC CEMS and monitor the process unit outlet THC concentration and establish your THC operating requirement during the performance test.

2. Add-On Control System Compliance Options

If you use the compliance options for add-on control systems, you must conduct an initial performance test using specified test methods to demonstrate initial compliance. With the exception of the 20 ppmvd THC concentration option, you must test at both the inlet and the outlet of the HAP control device. For HAP-altering controls in sequence, such as a wet control device followed by a thermal oxidizer, you must test at the functional inlet of the control sequence (e.g., prior to the wet control device) and at the outlet of the control sequence (e.g., thermal oxidizer outlet). If you use a wet control device as the sole means of reducing HAP emissions, you must develop and implement a plan to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere such that the desired emission reduction is obtained. If you use any of the six compliance options for add-on control systems, and the process unit is a press or a board cooler without a wood products enclosure, you must also test the capture efficiency of your partial wood products enclosure. Prior to the initial performance test, you must install control device parameter monitoring equipment or THC CEMS to be used to demonstrate compliance with the operating requirements for add-on control systems in today's final rule. During the initial performance test, you must use the control device parameter monitoring equipment or THC CEMS to establish the parameter values that represent your operating requirements for the control systems. If your add-on control system is preceded by a particulate control device (e.g., baghouse or wet electrostatic precipitators (WESP)), you must establish operating parameter values for the HAP control system and not for the particulate control device. If your control device is a biofilter, then you may use values recorded during previous performance tests for the biofilter to establish your operating requirements as long as you were in compliance with the emission limits in today's final rule when the data were collected, the test data were obtained using the test methods in today's final rule, and no modifications were made to the process unit or biofilter subsequent to the date of the performance tests.

3. Emissions Averaging Compliance Option

If you elect to comply with the emissions averaging compliance option in today's final rule, you must submit an Emissions Averaging Plan (EAP) to the Administrator for approval. The EAP must describe the process units you are including in the emissions average. The plan also must specify which process units will be credit-generating units (including under-controlled, debit-generating process units that also generate credits) and which process units will be debit-generating units. The EAP must also include descriptions of the control systems used to generate emission credits, documentation of the total HAP measurements made to determine the RMR, calculations and supporting documentation to demonstrate that the AMR will be greater than or equal to the RMR, and a summary of the operating parameters that will be monitored.

Following approval of your EAP, you must conduct performance tests to determine the total HAP emissions from all process units included in the EAP. The credit-generating process units must be equipped with add-on control systems; therefore, for those process units, you must follow the procedures for demonstrating initial compliance as outlined above for add-on control systems. For debit-generating process units without air pollution control devices (APCD), you must follow the same procedure for establishing your operating requirements as outlined above for process units meeting the PBCO. The emissions averaging provisions require you to conduct all total HAP measurements and performance test(s) when the process units are operating under representative operating conditions. Today's final rule defines ''representative operating conditions'' as those conditions under which the process unit will typically be operating following the compliance date. Representative conditions include such things as using a representative range of materials (*e.g.,* wood material of a typical species mix and moisture content, typical resin formulations) and

operating the process unit at typical operating temperature ranges.

4. Work Practice Requirements

The work practice requirements in today's final rule do not require you to conduct any initial performance tests. To demonstrate initial compliance with the work practice requirements for dry rotary dryers, you must install parameter monitoring devices to continuously monitor the dryer inlet operating temperature and the moisture content (dry basis) of the wood furnish (*i.e.,* wood fibers, particles, or strands used for making board) entering the dryer. You must then use the parameter monitoring devices to continuously monitor and record the dryer temperature and wood furnish moisture content for a minimum of 30 days. If the monitoring data indicate that during the minimum 30-day demonstration period, your dry rotary dryer continuously processed wood furnish with an inlet moisture content less than or equal to 30 percent, and the dryer was continuously operated at an inlet dryer temperature less than or equal to 600°F, then your dryer meets the definition of a dry rotary dryer in today's final rule. You must submit the monitoring data as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for hardwood veneer dryers, you must calculate the annualized percentage of softwood veneer processed in the dryer by volume, using veneer dryer production records for the 12-month period prior to the compliance date. If the total annual percentage by volume of softwood veneer is less than 30 percent, your veneer dryer meets the definition of hardwood veneer dryer. You must then submit a summary of the production data for the 12-month period and a statement verifying that the veneer dryer will continue to process less than 30 percent softwoods as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for softwood veneer dryers, you must develop a plan for minimizing fugitive emissions from the veneer dryer green end and heated zones. You must submit the plan with your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for veneer redryers, you must install a device that can be used to continuously monitor the moisture content (dry basis) of veneer entering the dryer. You must then use the moisture monitoring device to continuously monitor and record the inlet moisture content of the veneer for a minimum of 30 days. If the monitoring data indicate that your veneer dryer continuously processed veneer with a moisture content less than or equal to 25 percent during the minimum 30-day demonstration period, then your veneer dryer meets the definition of a veneer redryer in today's final rule. You must submit the monitoring data as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirement for group 1 miscellaneous coating operations, you must submit a signed statement with your notification of compliance status report stating that you are using non-HAP coatings. You must also have a record (*e.g.,* material safety data sheets) showing that you are using non-HAP coatings as defined in today's final rule.

H. How Do I Demonstrate Continuous Compliance With the Final Rule?

The continuous compliance requirements in today's final rule vary with the different types of compliance options.

1. Production-Based Compliance Options

If you comply with the PBCO, then you must monitor and/or record the controlling operating parameter(s) identified as affecting total HAP emissions from the process unit(s) in the performance test. For each parameter, you must use the monitoring methods, monitoring frequencies, and averaging times (for continuously monitored parameters not to exceed 24 hours) specified in your performance test and Notification of Compliance Status. For each operating parameter, you must maintain on a daily basis the parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established during the performance test.

Instead of monitoring process operating parameters, you may operate a CEMS for monitoring THC concentration to demonstrate compliance with the operating requirements in today's final rule. If you choose to operate a THC CEMS in lieu of a continuous parameter monitoring systems (CPMS), you must demonstrate continuous compliance, as described in the following subsection.

2. Add-On Control System Compliance Options

For add-on control systems, you must install a CPMS to monitor the temperature or install a CEMS to monitor THC concentration to demonstrate compliance with the operating requirements in today's final rule. If you operate a CPMS, you must have at least 75 percent of the required recorded readings for each 3-hour or 24-hour block averaging period to calculate the data averages. You must operate the CPMS at all times the process unit is operating. You must also conduct proper maintenance of the CPMS and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the data collected with the CPMS, you must calculate and record the average values of each operating parameter according to the specified averaging times.

For thermal oxidizers, you must continuously maintain the 3-hour block average firebox temperature at or above the minimum temperature established during the performance test. For catalytic oxidizers, you must continuously maintain the 3-hour block average catalytic oxidizer temperature at or above the minimum value established during the performance test. You must also check the activity level of a representative sample of the catalyst at least every 12 months and take any necessary corrective action to ensure that the catalyst is performing within its design range.

For biofilters, you must continuously maintain the 24-hour block average biofilter bed temperature within the operating range you establish during the performance test. You must also conduct a repeat performance test using the applicable method(s) within 2 years following the previous performance test and within 180 days after each replacement of any portion of the biofilter bed with a different media or each replacement of more than 50 percent (by volume) of the biofilter bed media with the same type of media.

If you choose to operate a CEMS for monitoring THC concentration instead of operating a CPMS, you must install, operate, and maintain the CEMS according to Performance Specification 8 in 40 CFR part 60, appendix B. You must also comply with the CEMS data quality assurance requirements in Procedure 1 of appendix F of 40 CFR part 60. You must conduct a performance evaluation of the CEMS according to 40 CFR 63.8 and Performance Specification 8. The CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Using the data collected with the CEMS, you must calculate and record the 3-hour block average THC concentration for thermal or catalytic oxidizers. For biofilters, you must calculate and record the 24-hour block

average THC concentration. You must continuously monitor and maintain the 24-hour block average THC concentration at or below the maximum established during the performance test. You may use a CEMS that subtracts methane from the measured THC concentration if you wish to do so.

If you comply with today's final rule using an add-on control system, you may request a routine control device maintenance exemption from the Administrator. Your request for a routine control device maintenance exemption must document the need for routine maintenance on the control device and the time required to accomplish the maintenance, describe the maintenance activities and the frequency of these activities, explain why the maintenance cannot be accomplished during process shutdowns, describe how you plan to make reasonable efforts to minimize emissions during these maintenance activities, and provide any other documentation required by the Administrator. If your request for the routine control device maintenance exemption is approved by the Administrator, it must be incorporated into your title V permit. The compliance options and operating requirements would not apply during times when control device maintenance covered under your approved routine control device maintenance exemption is performed. The routine control device maintenance exemption may not exceed 3 percent of annual operating uptime for each green rotary dryer, tube dryer, rotary strand dryer, or pressurized refiner controlled. The routine control device maintenance exemption is limited to 0.5 percent of the annual operating uptime for each softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, conveyor strand dryer, or fiberboard mat dryer controlled. If your control device is used to control a combination of equipment with different downtime allowances (*e.g.*, a tube dryer and a press), then the highest (*i.e.*, 3 percent) downtime allowance applies.

3. Emissions Averaging Compliance Option

To demonstrate continuous compliance with the emissions averaging provisions, you must continuously comply with the applicable operating requirements for add-on control systems (described in the previous subsection). You also must maintain records of your operating hours for each process unit included in the EAP. For each semiannual compliance period, you must demonstrate that the AMR equals or exceeds the RMR using your initial (or most recent) total HAP measurements for debit-generating units, initial (or most recent) performance test results for credit-generating units, and the operating hours recorded for the semiannual compliance period.

4. Work Practice Requirements

To demonstrate continuous compliance with the work practice requirements for dry rotary dryers and veneer redryers, you must operate all dry rotary dryers and veneer redryers so that they continuously meet the definitions of these process units in today's final rule. For dry rotary dryers, you must continuously monitor and maintain the inlet furnish moisture content at or below 30 percent and the inlet dryer operating temperature at or below 600°F. You must also calibrate the moisture monitor based on the procedures specified by the moisture monitor manufacturer at least once per semiannual compliance period to verify the readings from the moisture meter. For veneer redryers, you must continuously monitor and maintain the inlet veneer moisture content at or below 25 percent.

To demonstrate continuous compliance with the work practice requirements for softwood veneer dryers, you must follow the procedures in your operating plan for minimizing fugitive emissions from the green end and heated zones of the veneer dryer and maintain records documenting that you have followed your plan. For hardwood veneer dryers, you must continue to process less than 30 percent softwood veneer by volume and maintain records on veneer dryer production.

To demonstrate continuous compliance with the work practice requirements for group 1 miscellaneous coating operations, you must keep records showing that you continue to use non-HAP coatings as defined in the final rule.

I. How Do I Demonstrate That My Affected Source Is Part of the Low-Risk Subcategory?

For your affected source to be part of the delisted low-risk subcategory, you must have a low-risk demonstration approved by EPA, and you must then have federally enforceable conditions reflecting the parameters used in your EPA-approved demonstration incorporated into your title V permit to ensure that your affected source remains low-risk. Low-risk demonstrations for eight facilities were conducted by EPA, and no further demonstration is required for them. They will, however, need to obtain title V permit terms reflecting their status. (We will provide these sources and their title V permitting authorities with the necessary parameters for establishing corresponding permit terms and conditions.) These facilities are listed in Table 2 to this preamble. Other facilities may demonstrate to EPA that their PCWP affected source is low risk by using the look-up tables in appendix B to 40 CFR part 63, subpart DDDD or conducting a site-specific risk assessment as specified in appendix B to subpart DDDD. Appendix B to subpart DDDD also specifies which process units and pollutants must be included in your low-risk demonstration, emissions testing methods, the criteria for determining if an affected source is low risk, risk assessment methodology (look-up table analysis or site-specific risk analysis), contents of the low-risk demonstration, schedule for submitting and obtaining approval of your low-risk demonstration, and methods for ensuring that your affected source remains in the low-risk subcategory. If you demonstrate that your affected source is part of the delisted low-risk subcategory of PCWP manufacturing facilities, then your affected source is not subject to the MACT compliance options, operating requirements, and work practice requirements in the final PCWP rule (subpart DDDD).

1. Low-Risk Criteria

We may approve your affected source as eligible for membership in the delisted low-risk subcategory of PCWP sources if we determine that it is low risk for both carcinogenic and noncarcinogenic effects. To be considered low risk, the PCWP affected source must meet the following criteria: (1) The maximum off-site individual lifetime cancer risk at a location where people live is less than one in one million for carcinogenic chronic inhalation effects; (2) every maximum off-site target-organ specific hazard index (TOSHI) (or, alternatively, an appropriately site-specific set of hazard indices based on similar or complementary mechanisms of action that are reasonably likely to be additive at low dose or dose-response data for your affected source's HAP mixture) at a location where people live is less than or equal to 1.0 for noncarcinogenic chronic inhalation effects; and (3) the maximum off-site acute hazard quotients for acrolein and formaldehyde are less than or equal to 1.0 for

noncarcinogenic acute inhalation effects. These criteria are built into the look-up tables included in appendix B to subpart DDDD. Facilities conducting site-specific risk assessments must explicitly demonstrate that they meet these criteria. Facilities need not perform site-specific multipathway human health risk assessments or ecological risk assessments since EPA performed a source category-wide screening assessment which demonstrates that these risks are insignificant for all sources.

2. PCWP Affected Sources Delisted in Today's Action

Eight PCWP affected sources are being delisted today as part of the low-risk subcategory. They are listed below in Table 2 of this preamble. If your affected source is part of the low-risk subcategory and you do not wish it to remain in the subcategory, you may notify us, in writing, and we will remove your affected source from the low-risk subcategory. Any affected sources removed from the low-risk subcategory are subject to the requirements of subpart DDDD, as applicable. Please address your written notification to Ms. Mary Tom Kissell (see **FOR FURTHER INFORMATION CONTACT** section).

TABLE 2. — LOW - RISK AFFECTED SOURCES IN THE LOW-RISK PCWP SUBCATEGORY

Name of Affected Source	Location
Georgia-Pacific Plywood Plant.	Monroeville, AL.
Georgia-Pacific—Hawthorne Plywood Mill.	Hawthorne, FL.
Oregon Panel Products (Lebanite).	Lebanon, OR.
Hardel Mutual Plywood Corporation.	Chehalis, WA.
Hood Industries, Incorporated.	Wiggins, MS.
Plum Creek Manufacturing, LP.	Kalispell, MT.
Potlatch Corporation—St. Maries Plywood.	St. Maries, ID.
SierraPine Limited, Rocklin MDF.	Rocklin, CA.

We performed a risk assessment to determine the magnitude of potential chronic human cancer and noncancer risks and the potential for acute noncancer risks and adverse environmental impacts associated with the sources in the PCWP source category. The risk assessment was performed for 181 of the 223 major PCWP affected sources. Affected sources where available location data were ambiguous or where all of their site-specific information was requested to be treated as confidential were excluded from the analysis, leaving a total of 181 affected sources in the assessment. For the risk assessment, we used our baseline emission estimates (developed using average emission factors and, if available, site-specific process throughput data) and model PCWP emissions release characteristics as inputs into our Human Exposure Model (HEM) to generate cancer and non-cancer risk estimates for the 181 PCWP affected sources. The risk assessment methodology is explained in detail in the supporting information for this final rule.

Because our risk estimates include model emissions release information, they are not as rigorous as the risk demonstrations we are requiring PCWP affected sources to perform. Therefore, to ensure the affected sources listed in Table 2 of this preamble meet the low risk criteria in appendix B to subpart DDDD, we subjected them to more stringent standards than required for risk demonstrations based on better (*i.e.*, site-specific) data. First, we increased the level of protection to human health by a factor of 10. Instead of using the criteria established in appendix B to subpart DDDD of one in 1 million risk for cancer and TOSHI of less than or equal to 1.0, PCWP affected sources with cancer risk greater than 0.1 in 1 million or a TOSHI greater than 0.1 were excluded. For the remaining PCWP affected sources, we estimated emission factors based on the highest emissions test data we had. We remodeled these PCWP affected sources using worst-case (*i.e.* highest) emission factors and the January 2004 IRIS cancer URE for formaldehyde. From this analysis, affected sources with hazard index values greater than 0.2 or cancer risks greater than one in 1 million were excluded. Of the remaining affected sources, we eliminated those that are closed, have pending enforcement actions, and that did not submit or claimed as confidential site-specific throughput data. We also consulted with an industry trade association and they removed various affected sources from the list for various reasons.

3. Determining HAP Emissions From the Affected Source

You must include in your low-risk demonstration every process unit within the PCWP affected source that emits one or more of the following HAP: acetaldehyde, acrolein, arsenic, benzene, beryllium, cadmium, chromium, formaldehyde, lead, MDI, manganese, nickel, and phenol. You must conduct emissions testing using the methods specified in appendix B to subpart DDDD. For reconstituted wood product presses or reconstituted wood product board coolers, you must determine the capture efficiency of the capture device. If you use a control device for purposes of demonstrating that your affected source is part of the low-risk subcategory, then you must collect monitoring data and establish operating limits for the control system using the same methods specified in subpart DDDD.

4. Low-Risk Demonstrations

Once you have conducted emissions testing, you may perform a lookup table analysis or site-specific risk analysis. Regardless of the type of risk analysis used, you must use the most recent EPA-approved dose-response values as posted on our Air Toxics Website at *http://www.epa.gov/ttn/atw/toxsource/summary.html* to demonstrate that your affected source may be part of the low-risk subcategory. If you can demonstrate that your affected source is low-risk based on the look-up table analysis, then you need not complete a site-specific risk analysis. If your affected source is not low-risk based on the look-up table analysis, then you may elect to proceed with site-specific risk analysis. Appendix B to subpart DDDD specifies what your low-risk demonstration must contain.

Look-up table analysis. You may use the look-up tables (Tables 3 and 4 to 40 CFR part 63, subpart DDDD, appendix B) to determine if your affected source may be part of the low-risk subcategory. Table 3 to appendix B to subpart DDDD provides the maximum allowable toxicity-weighted carcinogen emission rate, and Table 4 to appendix B to subpart DDDD provides the maximum allowable toxicity-weighted noncarcinogen emission rate that your affected source can emit. To use the look-up tables, you must determine your toxicity-weighted carcinogen and noncarcinogen emission rates using the equations in appendix B to subpart DDDD; the average stack height of all PCWP emission points at your affected source; and the minimum distance from any emission point to the nearest property boundary. If the total toxicity-weighted carcinogen and noncarcinogen emission rates for your affected source are less than or equal to the values in both look-up tables, then EPA may approve your affected source as part of the low-risk subcategory of PCWP affected sources.

Site-specific risk assessment. You may use any scientifically-accepted peer-reviewed risk assessment methodology to demonstrate to EPA that

your affected source may be low risk. An example approach to performing a site-specific risk assessment for air toxics that may be appropriate for your affected source can be found in the ''Air Toxics Risk Assessment Reference Library.'' However, this approach may not be appropriate for all affected sources, and EPA may require that any specific affected source use an alternative approach. You may obtain a copy of the ''Air Toxics Risk Assessment Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document'' through EPA's air toxics website at *www.epa.gov/ttn/atw.*

For EPA to approve your low-risk demonstration, you must demonstrate that: (1) The maximum off-site individual lifetime cancer risk at a location where people live is less than one in one million for carcinogenic chronic inhalation effects; (2) every maximum off-site TOSHI at a location where people live is less than or equal to 1.0 for non-carcinogenic chronic inhalation effects; and (3) the maximum off-site acute hazard quotients for acrolein and formaldehyde are less than or equal to 1.0 for noncarcinogenic acute inhalation effects.

5. When Must I Submit Risk Demonstrations to EPA?

You must submit your low-risk demonstration to EPA for approval. If you have an existing affected source, you must submit your low-risk demonstration no later than July 31, 2006. To facilitate the review and approval process, EPA encourages facilities to submit their assessments as soon as possible. If you have an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before the effective date of subpart DDDD, then you must complete and submit for EPA approval your low-risk demonstration no later than July 31, 2006. If you have an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP after the effective date of subpart DDDD, then you must complete and submit for approval your low-risk demonstration no later than 12 months after you become a major source or after initial startup of your affected source as a major source, whichever is later.

If you have a new or reconstructed affected source you must conduct the emission tests upon initial startup and use the results of these emissions tests to complete and submit your low-risk demonstration within 180 days following your initial startup date. If your new or reconstructed affected source starts up before the effective date of subpart DDDD, for EPA to find that you are included in the low-risk subcategory, your low-risk demonstration must show that you were eligible for the low-risk subcategory no later than the effective date of subpart DDDD. If your new or reconstructed source starts up after the effective date of subpart DDDD, for EPA to find that you are included in the low-risk subcategory, your low-risk demonstration must show that you were eligible for the low-risk subcategory upon initial startup of your affected source.

Affected sources that are not part of the low-risk subcategory within 3 years after the effective date of subpart DDDD must comply with the requirements of 40 CFR part 63, subpart DDDD. Facilities may not request compliance extensions from the permitting authority if they fail to demonstrate they are part of the low-risk subcategory or to request additional time to install controls to become part of the low-risk subcategory. All approved low risk sources must then obtain title V permit revisions including terms and conditions reflecting the parameters used in their approved demonstrations, according to the schedules in their applicable part 70 or part 71 title V permit programs.

6. Remaining in the Low-Risk Subcategory

You must ensure that your affected source is low risk by periodically certifying your affected source is low risk, monitoring applicable HAP control device parameters, and by maintaining certain records. You must certify with each annual title V permit compliance certification that the basis for your affected source's low-risk determination has not changed. Your certification must consider process changes that increase HAP emissions, population shifts, and changes to dose-response values. If your affected source commences operating outside of the low-risk subcategory, it is no longer part of the low-risk subcategory. You must notify the permitting authority as soon as you know, or could have reasonably known, that your affected source is or will be operating outside of the low-risk subcategory. You must be in compliance with all of the applicable requirements of 40 CFR part 63, subpart DDDD beginning on the date when your affected source commences operating outside the low-risk subcategory if you had a process change that increases HAP emissions. If you are operating outside of the low-risk subcategory due to a population shift or change to dose-response values, then you must comply with all of the applicable requirements of 40 CFR part 63, subpart DDDD no later than three years from the date your affected source commences operating outside the low-risk subcategory.

III. Summary of Environmental, Energy, and Economic Impacts

A. How Many Facilities Are Impacted by the Final Rule?

Facilities with estimated potential to emit 25 tons or more of total HAP or 10 or more tons of an individual HAP are major sources of HAP and are subject to the final rule. Approximately 223 PCWP major source facilities nationwide are expected to meet the applicability criteria defined in today's final rule. These major source facilities generally manufacture one or more of the following products: Softwood plywood, softwood veneer, medium density fiberboard (MDF), oriented strandboard (OSB), particleboard, hardboard, laminated strand lumber, and laminated veneer lumber. However, only 212 of these facilities have equipment that is subject to the control requirements of the final rule. In addition, there are approximately 34 major source sawmill facilities that produce kiln-dried lumber; although these major source sawmill facilities meet the applicability criteria in the final rule, there are no control requirements for any of the equipment located at the sawmills.

The number of impacted facilities was determined based on the estimated potential to emit (*i.e.*, uncontrolled HAP emissions) from each facility, whether each facility has any process units subject to the compliance options, whether or not the facility already operates control systems necessary to meet the final rule, and whether or not the affected source is currently eligible (or may later demonstrate eligibility) for inclusion in the delisted low risk subcategory. Of the 223 major source facilities, an estimated 162 are expected to install add-on control systems to reduce emissions. The remaining facilities already have installed add-on controls, do not have any process units subject to the compliance options, are expected to comply with work practice requirements only, or are one of the eight facilities currently eligible for inclusion in the delisted low-risk subcategory. We estimate that eventually as many as 147 of the 223 major source PCWP facilities may demonstrate eligibility for the low-risk subcategory, leaving 58 facilities expected to install add-on control systems to reduce emissions. Some of the 147 facilities expected to eventually

be included the low-risk subcategory were not expected to install controls to meet MACT because they either already have the necessary controls or do not have process units subject to the compliance options in today's final rule.

The environmental and cost impacts presented in this preamble represent the estimated impacts for the range of facilities, from 58 facilities estimated to be impacted following completion of eligibility demonstrations for the low-risk subcategory, to 162 facilities estimated to be impacted today. The impact estimates were based on the use of RTO (or in some cases a combination WESP and RTO) because RTO are the most prevalent HAP emissions control technology used in the PCWP industry. However, technologies other than RTO could be used to comply with today's final rule. For a facility that we feel already achieves the emissions reductions required by today's final rule, only testing, monitoring, reporting and recordkeeping cost impacts were estimated.

B. What Are the Air Quality Impacts?

We estimate nationwide baseline HAP emissions from the PCWP source category to be 17,000 Mg/yr (19,000 tons/yr) at the current level of control. We estimate that today's final rule will reduce total HAP emissions from the PCWP source category by about 9,900 Mg/yr (11,000 tons/yr). In addition, we estimate that today's final rule will reduce VOC emissions (approximated as THC) by about 25,000 Mg/yr (27,000 tons/yr) from a baseline level of 45,000 Mg/yr (50,000 tons/yr). Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, these emission reductions could change to 5,900 Mg/yr (6,600 tons/yr) for HAP or 13,000 Mg/yr (14,000 tons/yr) for VOC.

In addition to reducing emissions of HAP and VOC, today's final rule will also reduce emissions of criteria pollutants, such as carbon monoxide (CO) from direct-fired emission sources and particulate matter less than 10 microns in diameter (PM_{10}). We estimate that today's final rule will reduce CO emissions by about 9,500 Mg/yr (10,000 tons/yr). We also estimate that the final rule will reduce PM_{10} emissions by about 11,000 Mg/yr (12,000 tons/yr). Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, these emission reductions could change to 7,600 Mg/yr (8,400 tons/yr) for CO and 5,300 Mg/yr (5,900 tons/yr) for PM_{10}.

Combustion of exhaust gases in an RTO generates some emissions of nitrogen oxides (NO_X). We estimate that the nationwide increase in NO_X emissions due to the use of RTO will be about 2,100 Mg/yr (2,400 tons/yr). This estimated increase in NO_X emissions may be an overestimate because some plants may select control technologies other than RTO to comply with today's final rule. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the estimated NO_X emission increase could fall to 1,100 Mg/yr (1,200 tons/yr).

Secondary air impacts of today's final rule could result from increased electricity usage associated with operation of control devices. The secondary air emissions of NO_X, CO, PM_{10}, sulfur dioxide (SO2) depend on the fuel used to generate electricity and on other factors. The EPA believes SO2 emissions may not increase from electric generation since that the requirements of the Acid Rain trading program will keep power plants from increasing their SO2 emissions. Furthermore, we believe that NO_X emissions increases from power plants may be limited. The EPA expects the emissions trading program that is part of the NO_X SIP call will likely keep NO_X emissions in the eastern United States from increasing as result of additional power generation to operate RTOs.

C. What Are the Water Quality Impacts?

Wastewater is produced from WESP blowdown, washing out of RTO, and biofilters. We based all of our impact estimates on the use of RTO (with or without a WESP upstream depending on the process unit). We estimate that the wastewater generated from WESP blowdown and RTO washouts will increase by about 100,000 cubic meters per year (m^3/yr) (27 million gallons per year (gal/yr)) as a result of today's final rule. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the wastewater impacts could fall to 90,000 cubic meters per year (m^3/yr) (24 million gallons per year (gal/yr)). According to the data in our MACT survey, this nationwide increase in wastewater flow is within the range of water flow rates handled by individual facilities. Facilities would likely dispose of this wastewater by sending it to a municipal treatment facility, reusing it onsite (*e.g.*, in log vats or resin mix), or hauling it offsite for spray irrigation. In addition, we are amending the effluent limitations, guidelines for the timber products processing point source category to allow facilities (on a case-by-case basis) to obtain a permit to discharge wastewaters from APCD installed to comply with today's final rule.

D. What Are the Solid Waste Impacts?

Solid waste is produced in the form of solids from WESP and by RTO or RCO media replacement. We estimate that 4,500 Mg/yr (4,900 tons/yr) of solid waste will be generated as a result of today's final rule. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the solid waste increase could change to 2,800 Mg/yr (3,000 tons/yr). Some PCWP facilities have been able to use RTO or RCO media as aggregate in onsite roadbeds. Some facilities have also been able to identify a beneficial reuse for wet control device solids (such as giving them away to local farmers for soil amendment).

E. What Are the Energy Impacts?

The overall energy demand (*i.e.*, electricity and natural gas) is expected to increase by about 4.3 million gigajoules per year (GJ/yr) (4.1 trillion British thermal units per year (Btu/yr)) nationwide under today's final rule. The estimated increase in the energy demand is based on the electricity requirements associated with RTO and WESP and the fuel requirements associated with RTO. Electricity requirements are expected to increase by about 711 gigawatt hours per year (GWh/yr) under today's final rule. Natural gas requirements are expected to increase by about of 44 million m^3/yr (1.6 billion cubic feet per year (ft^3/yr)) under the final rule. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, these energy estimates could fall to 2.3 million GJ/yr (2.2 trillion Btu/yr) for overall energy demand, 378 GWh/yr for the increase in electricity requirements, and 24 million m^3/yr (0.9 billion ft^3/yr) for the increase in natural gas requirements.

F. What Are the Cost Impacts?

The cost impacts estimated for today's final rule represent a high-end estimate of costs. Although the use of RTO technology to reduce HAP emissions represents the most expensive compliance option, we based our nationwide cost estimates on the use of RTO technology at all of the impacted facilities because: (1) RTO technology can be used to reduce emissions from all types of PCWP process units; and (2) we could not accurately predict which facilities would use emissions averaging or PBCO or install add-on control devices that are less costly to operate, such as RCO and biofilters. Therefore, our cost estimates are likely to be

overstated as we anticipate that owners and operators of impacted sources will take advantage of available cost saving opportunities.

The high-end estimated total capital costs of today's final rule are $471 million. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the capital costs could fall to $240 million. These capital costs apply to existing sources and include the costs to purchase and install both the RTO equipment (and in some cases, a WESP upstream of the RTO) and the monitoring equipment, and the costs of performance tests. Wood products enclosure costs are also included for reconstituted wood products presses.

The high-end estimated annualized costs of the final standards are $140 million. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the annualized costs could fall to $74 million. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, and recordkeeping and reporting costs. Potential control device cost savings and increased recordkeeping and reporting costs associated with the emissions averaging provisions in today's final rule are not accounted for in either the capital or annualized cost estimates.

G. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increases for affected output would range from 0.4 to 1.3 percent as a result of the NESHAP for PCWP manufacturers. The expected change in production of affected output is a reduction of 0.06 to 0.4 percent for PCWP manufacturers as a result of today's final rule. No plant closures are expected out of the 223 facilities affected by the final rule. Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce output affected by the final rule, such as hardboard, softwood plywood and veneer, engineered wood products, and other wood composites.

H. What Are the Social Costs and Benefits?

Our assessment of costs and benefits of today's final rule is detailed in the ''Regulatory Impact Analysis for the Proposed Plywood and Composite Wood Products MACT.'' The Regulatory Impact Analysis (RIA) is located in Docket number A–98–44 and Docket number OAR–2003–0048.

It is estimated that 3 years after implementation of the final rule requirements, reductions of formaldehyde, acetaldehyde, acrolein, methanol, phenol and several other HAP from existing PCWP emission sources would be 5,900 Mg/yr (6,600 tons/yr) to 9,900 Mg/yr (11,000 tons/yr), depending on how many affected sources are in the low-risk subcategory. The health effects associated with these HAP are discussed earlier in this preamble.

At this time, we are unable to provide a comprehensive quantification and monetization of the HAP-related benefits of the final rule. Nevertheless, it is possible to derive rough estimates for one of the more important benefit categories, *i.e.*, the potential number of cancer cases avoided and cancer risk reduced as a result of the imposition of the MACT level of control on this source category. Our analysis suggests that imposition of the MACT level of control would reduce cancer cases by less than one case per year, on average, starting some years after implementation of the standards. We present these results in the RIA. This risk reduction estimate is uncertain and should be regarded as an extremely rough estimate and should be viewed in the context of the full spectrum of unquantified noncancer effects associated with the HAP reductions.

The control technologies used to reduce the level of HAP emitted from PCWP sources are also expected to reduce emissions of CO, PM_{10}, and VOC. Depending on how many affected sources are in the low-risk subcategory, it is estimated that CO emissions reductions total approximately 7,600 Mg/yr (8,400 tons/yr) to 9,500 Mg/yr (10,000 tons/yr), PM_{10} emissions reductions total approximately 5,300 Mg/yr (5,900 tons/yr) to 11,000 Mg/yr (12,000 tons/yr), and VOC emissions reductions (approximated as THC) total approximately 13,000 Mg/yr (14,000 tons/yr) to 25,000 Mg/yr (27,000 tons/yr). These estimated reductions occur from existing sources in operation 3 years after the implementation of the requirements of the final rule and are expected to continue throughout the life of the sources. Human health effects associated with exposure to CO include cardiovascular system and CNS effects, which are directly related to reduced oxygen content of blood and which can result in modification of visual perception, hearing, motor and sensorimotor performance, vigilance, and cognitive ability. The VOC emissions reductions may lead to some reduction in ozone concentrations in areas in which the affected sources are located. There are both human health and welfare effects that result from exposure to ozone, and these effects are listed in Table 3 of this preamble.

TABLE 3.—UNQUANTIFIED BENEFIT CATEGORIES FROM HAP, OZONE-RELATED, AND PM EMISSIONS REDUCTIONS

	Unquantified effects categories associated with HAP	Unquantified effect categories associated with ozone	Unquantified effect categories associated with PM
Health Categories ...	Carcinogenicity Genotoxicity Pulmonary function decrement Dermal irritation Eye irritation Neurotoxicity Immunotoxicity Pulmonary function decrement Liver effects Gastrointestinal effects Kidney effects Cardiovascular impairment Hematopoietic (Blood disorders) Reproductive/Developmental effects	Airway responsiveness Pulmonary inflammation Increased susceptibility to respiratory infection Acute inflammation and respiratory cell damage Chronic respiratory damage/Premature aging of lungs Emergency room visits for asthma Hospital admissions for respiratory diseases Asthma attacks Minor restricted activity days	Premature mortality Chronic bronchitis Hospital admissions for chronic obstructive pulmonary disease, pneumonia, cardiovascular diseases, and asthma Changes in pulmonary function Morphological changes Altered host defense mechanisms Cancer Other chronic respiratory disease Emergency room visits for asthma Lower and upper respiratory symptoms Acute bronchitis Shortness of breath Minor restricted activity days Asthma attacks Work loss days.

TABLE 3.—UNQUANTIFIED BENEFIT CATEGORIES FROM HAP, OZONE-RELATED, AND PM EMISSIONS REDUCTIONS—Continued

	Unquantified effects categories associated with HAP	Unquantified effect categories associated with ozone	Unquantified effect categories associated with PM
Welfare Categories	Corrosion/Deterioration Unpleasant odors Transportation safety concerns Yield reductions/Foliar injury Biomass decrease Species richness decline Species diversity decline Community size decrease Organism lifespan decrease Trophic web shortening	Ecosystem and vegetation effects in Class I areas (*e.g.,* national parks) Damage to urban ornamentals (*e.g.,* grass, flowers, shrubs, and trees in urban areas) Commercial field crops Fruit and vegetable crops Reduced yields of tree seedlings, commercial and non-commercial forests Damage to ecosystems Materials damage Reduced worker productivity	Materials damage Damage to ecosystems (*e.g.,* acid sulfate deposition) Nitrates in drinking water.

At the present time, we cannot provide a monetary estimate for the benefits associated with the reductions in CO. We also did not provide a monetary estimate for the benefits associated with the changes in ozone concentrations that result from the VOC emissions reductions since we are unable to do the necessary air quality modeling to estimate the ozone concentration changes. For PM_{10}, we did not provide a monetary estimate for the benefits associated with the reduction of the emissions, although these reductions are likely to have significant health benefits to populations living in the vicinity of affected sources.

There may be increases in NO_X emissions associated with today's final rule as a result of increased use of incineration-based controls. These NO_X emission increases by themselves could cause some increase in ozone and particulate matter (PM) concentrations, which could lead to impacts on human health and welfare as listed in Table 3 of this preamble. The potential impacts associated with increases in ambient PM and ozone due to these emission increases are discussed in the RIA. In addition to potential NO_X increases at affected sources, today's final rule may also result in additional electricity use at affected sources due to application of controls. As such, the final rule may result in additional health impacts from increased ambient PM and ozone from these increased utility emissions. We did not quantify or monetize these health impacts.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. These general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references.

In determining the overall economic consequences of the final rule, it is essential to consider not only the costs and benefits expressed in dollar terms but also those benefits and costs that we could not quantify. A full listing of the benefit categories that could not be quantified or monetized in our analysis is provided in Table 3 of this preamble.

IV. Summary of Responses To Major Comments and Changes to the Plywood and Composite Wood Products NESHAP

We proposed the PCWP NESHAP on January 9, 2003 (68 FR 1276), and received 57 comment letters on the proposal during the comment period. In response to the public comments received on the proposed rule, we made several changes in developing today's final rule. Table 4 of this preamble provides a list of the major changes that we made to the final rule. The major comments and our responses are summarized in the following sections. A complete summary of the comments received during the comment period and responses thereto can be found in the background information document (BID) for the promulgated rule, which is available from several sources (see **SUPPLEMENTARY INFORMATION** section).

TABLE 4.—SUMMARY OF MAJOR CHANGES TO SUBPART DDDD OF PART 63

Proposed section	Final section	Change from proposal
§ 63.2231	§ 63.2231	Revised section to state that subpart DDDD does not apply to facilities that are part of the low-risk subcategory of PCWP manufacturing facilities.
§ 63.2232(b)	§ 63.2232(b)	Description of affected source revised to be consistent with revised definition.
§ 63.2240	§ 63.2240	Clarified application of compliance options to a single process unit.
§ 63.2240(a)	§ 63.2240(a)	Added wet control device to the list of devices that may not be used to meet the PBCO.
§ 63.2240(b)	§ 63.2240(b)	Changed press enclosure reference from "PTE" to "wood products enclosure."

TABLE 4.—SUMMARY OF MAJOR CHANGES TO SUBPART DDDD OF PART 63—Continued

Proposed section	Final section	Change from proposal
§ 63.2240(c)(1)	§ 63.2240(c)(1)	Revised definition of AMR and $OCEP_i$ in emissions averaging calculations to clarify that sources can receive partial credits from debit-generating process units that are undercontrolled; revised definition of CD_i to address test method for biological treatment units that do not meet the definition of biofilter.
§ 63.2240(c)(2)(iii)	§ 63.2240(c)(2)(iii)	Revised restriction on emissions average related to process units that are already controlled.
	§ 63.2241(c)	Added new section that exempts dry rotary dryers, hardwood veneer dryers, and veneer redryers from work practice requirements if they comply with more stringent standards in § 63.2240.
§ 63.2250(a)	§ 63.2250(a)	Revised section to clarify that SSM refers to both process unit and control device SSM.
§ 63.2250(d)	§ 63.2250(a)	Moved and revised section to consolidate explanation of SSM provisions.
	§ 63.2250(d)	Added specific example of a shutdown for direct-fired burners and a specific example of a startup for direct-fired softwood veneer dryers.
§ 63.2250(e)		Removed requirement to record control device maintenance schedule.
§ 63.2250(f)		Removed requirement to maintain and operate catalyst according to manufacturer's specifications.
§ 63.2251(a)	§ 63.2251(a)	Added partial list of events eligible for a routine control device exemption; clarified duty to minimize emissions.
§ 63.2251(b)(1)	§ 63.2251(b)(1)	Specified type of strand dryer controlled by a control device eligible for a routine control device maintenance exemption of 3 percent of annual uptime.
§ 63.2251(b)(2)	§ 63.2251(b)(2)	Added conveyor strand dryer to list of process units controlled by a control device eligible for a routine control device maintenance exemption of 0.5 percent of annual uptime.
§ 63.2251(e)	§ 63.2251(e)	Removed requirement to schedule control device maintenance at the beginning of each semi-annual period.
§ 63.2260(a)	§ 63.2260(a)	Expanded exemption from testing and monitoring requirements to all combustion units that introduce process unit exhaust into the flame zone.
§ 63.2262(d)	§ 63.2262(d)(1) § 63.2262(d)(2)	Added sampling location requirements for control devices in sequence, process units with no control device, and process units with a wet control device.
§ 63.2262(g)	§ 63.2262(g)(1)	Reworded and renumbered section to allow for one case in which non-detect data is not considered to be one-half the method detection limit.
	§ 63.2262(g)(2)	Added exception to requirement to treat non-detect data as one-half the detection limit.
§ 63.2262(k)(1)	§ 63.2262(k)(1)	Clarified requirements for establishing the minimum firebox temperature for thermal oxidizers.
§ 63.2262(k)(2) § 63.2262(k)(3)		Removed sections on establishing operating parameter limits for static pressure and stack gas flow for thermal oxidizers.
§ 63.2262(k)(4)	§ 63.2262(k)(2)	Removed references to static pressure and gas flow rate operating parameters.
§ 63.2262(k)(5)	§ 63.2262(k)(3)	Revised eligibility criteria for exemptions from performance testing and operating requirements for thermal oxidizers.
§ 63.2262(l)(1)	§ 63.2262(l)(1)	Clarified requirements for establishing the minimum catalytic oxidizer temperature.
§ 63.2262(l)(2) § 63.2262(l)(3)		Removed sections on establishing operating parameter limits for static pressure and stack gas flow for catalytic oxidizers.
§ 63.2262(l)(4)	§ 63.2262(l)(2)	Removed references to static pressure and gas flow rate operating parameters.
§ 63.2262(m)(1) § 63.2262(m)(2)	§ 63.2262(m)(1) § 63.2262(m)(2)	Revised requirements for establishing biofilter operating limits (temperature range).
§ 63.2262(n)(1)	§ 63.2262(n)(1)	Revised monitoring requirements for process units that meet compliance options without the use of an add-on control device.
§ 63.2267	§ 63.2267	Added initial compliance criteria for a wood products enclosure.
	§ 63.2268	Added criteria for demonstration of initial compliance for a wet control device.
§ 63.2268(a)(1)	§ 63.2269(a)(1)	Revised continuous parameter monitoring system requirements.
§ 63.2268(a)(3)	§ 63.2270(d)	Revised and moved sections regarding determination of block averages and valid data to section on continuous compliance requirements.
§ 63.2268(a)(4)	§ 63.2270(e)	
§ 63.2268(b)(2)	§ 63.2269(b)(2)	Clarified temperature measurement requirements.
§ 63.2268(b)(3)	§ 63.2268(b)(3)	
§ 63.2268(c) § 63.2268(d) § 63.2268(e)		Removed sections regarding pH, pressure, and flow monitoring.

TABLE 4.—SUMMARY OF MAJOR CHANGES TO SUBPART DDDD OF PART 63—Continued

Proposed section	Final section	Change from proposal
§ 63.2268(f)(1)	§ 63.2269(c)(1)	Revised requirements for wood moisture monitoring.
§ 63.2268(f)(2)	§ 63.2269(c)(2)	
	§ 63.2269(c)(5)	Added equation for converting moisture measurements from wet basis to dry basis.
§ 63.2270(c)	§ 63.2270(c)	Added language to specify that data recorded during periods of SSM may not be used in data averages and calculations used to report emission or operating levels.
	§ 63.2270(f)	Added requirement that 75 percent of readings recorded and included in block averages must be based on valid data.
§ 63.2280(f)(6)	§ 63.2280(f)(6)	Revised EAP submission requirements to include information on debit-generating process units.
	§ 63.2282(e)	Added requirement to keep records of annual catalyst activity checks and subsequent corrective actions for catalytic oxidizers.
§ 63.2291	§ 63.2291	Revised section to state that EPA retains authority to review eligibility demonstrations for the low-risk subcategory.
	§ 63.2292	Added definitions of ''agricultural fiber,'' ''combustion unit,'' ''conveyor strand dryer,'' ''conveyor strand dryer zone,'' ''flame zone,'' ''group 1 miscellaneous coating operations,'' ''non-HAP coating,'' ''one-hour period,'' ''partial wood products enclosure,'' ''primary tube dryer,'' ''rotary strand dryer,'' ''secondary tube dryer,'' ''wet control device,'' and ''wood products enclosure.''
§ 63.2292		Removed definitions of ''permanent total enclosure,'' ''plant site,'' and ''strand dryer.''
§ 63.2292	§ 63.2292	Revised definitions of ''affected source,'' ''biofilter,'' ''deviation,'' ''fiber,'' ''fiberboard,'' ''hardboard,'' ''medium density fiberboard,'' ''miscellaneous coating operations,'' ''particle,'' ''particleboard,'' ''plywood and composite wood products (PCWP) manufacturing facility,'' ''softwood veneer dryer,'' and ''thermal oxidizer.''
Table 1A	Table 1A	Changed ''tube dryers'' to ''primary tube dryers'' and added ''secondary tube dryers''; added PBCO limit for secondary tube dryers; revised PBCO limit for reconstituted wood product board coolers; changed ''strand dryers'' to ''rotary strand dryers.''
Table 1B	Table 1B	Added ''rotary strand dryers,'' ''conveyor strand dryer zone one (at existing affected sources),'' and ''conveyor strand dryer zones one and two (at new affected sources)'' to the list of process units.
Table 2, Line 1	Table 2, Line 1	Reduced thermal oxidizer operating requirements to maintaining the average firebox temperature above the minimum temperature.
Table 2, Line 2	Table 2, Line 2	Reduced catalytic oxidizer operating requirements to maintaining the temperature above a minimum temperature and checking the activity level of a representative sample of the catalyst every 12 months.
Table 2, Line 3	Table 2, Line 3	Reduced biofilter operating requirements to maintaining the biofilter bed temperature within a range.
Table 2, Line 5	Table 2, Line 5	Revised operating requirements for process units without control devices.
	Table 3, Line 5	Added work practice requirements for group 1 miscellaneous coating operations.
Table 4, Line 9	Table 4, Line 9	Revised the performance test criteria for reconstituted wood product presses and reconstituted wood product board coolers.
Table 4, Line 11	Table 4, Line 11	Revised text to clarify that performance test requirements apply to all process units in an emissions average plan.
Table 5, Line 7	Table 5, Line 7	Removed minimum heat input capacity criterion for combustion units.
	Table 5, Line 8	Added criteria for performance testing and initial compliance demonstrations for wet control devices.
	Table 6, Line 5	Added initial compliance demonstration for Group 1 miscellaneous coating operations.
Table 7, Line 1	Table 7, Line 1	Revised ''at or above the maximum, at or below the minimum'' to read ''at or above the minimum, at or below the maximum.''
	Table 7, Line 3	Added continuous compliance requirements (periodic testing) for biofilters.
	Table 7, Line 4	Added continuous compliance requirements (annual catalyst activity check) for catalytic oxidizers.
	Table 7, Line 5	Added continuous compliance requirements for process units achieving compliance without an add-on control device.
Table 8, Line 1	Table 8, Line 1	Specified block averages of 24 hours for moisture and temperature measurements for dry rotary dryers.
Table 8, Line 4	Table 8, Line 4	Specified block average of 24 hours for moisture measurements for veneer dryers.
	Table 8, Line 5	Added continuous compliance requirements for Group 1 miscellaneous coating operations.
Table 10, § 63.8(g)	Table 10, § 63.8(g)	Added ''rounding of data'' to description of the General Provisions section.

TABLE 4.—SUMMARY OF MAJOR CHANGES TO SUBPART DDDD OF PART 63—Continued

Proposed section	Final section	Change from proposal
Appendix A to Subpart DDDD	Appendix A to Subpart DDDD	Made various revisions throughout to reflect the removal of a permanent total enclosure (PTE) as a requirement for reconstituted wood products presses and board coolers.
	Appendix B to Subpart DDDD	Added appendix B to specify procedure for demonstrating that an affected source is part of the low-risk subcategory.

A. Applicability

1. Definition of Affected Source

Comment: Several commenters requested that we clarify that the PCWP affected source includes refining and resin preparation activities such as mixing, formulating, blending, and chemical storage, and suggested that boilers be excluded. The commenters wanted to ensure that onsite resin preparation activities are specifically mentioned in and regulated by the final PCWP rule to avoid duplicate regulation of those activities under the Miscellaneous Organic Chemical Manufacturing NESHAP (subpart FFFF) or the Miscellaneous Coating Manufacturing NESHAP (subpart HHHHH). Commenters also recommended changing the proposed definition of affected source by revising the definition of ''plant site,'' which was used in the affected source definition at proposal. The commenters asked that we make the definition of ''plant site'' consistent with the definition of ''major source'' as defined for title V permitting in 40 CFR 70.2. According to the commenters, the proposed definition of ''plant site'' expanded the definition of a source beyond that used for title V permitting or MACT applicability in general.

Response: We agree with the commenters that changes should be made to the definition of affected source, and the definition was adjusted in the final rule. We added resin preparation activities to the definition of ''affected source'' to clarify that these activities are part of the PCWP source category and are not subject to subpart FFFF to 40 CFR part 63 or subpart HHHHH to 40 CFR part 63. Resin preparation includes any mixing, blending, or diluting of resins used in the manufacture of PCWP products which occurs at the PCWP manufacturing facility. We feel this change is appropriate because the MACT analysis for resin preparation activities was conducted under the PCWP final rulemaking. (As explained in the proposal BID and supporting documentation, we determined that MACT for new and existing blenders and resin storage/mixing tanks is no emissions reductions.) Subpart FFFF to 40 CFR part 63 and subpart HHHHH to 40 CFR part 63 exclude activities included as part of the affected source for other source categories. Thus, onsite resin preparation activities at a PCWP manufacturing facility are not subject to subpart FFFF to 40 CFR part 63 or subpart HHHHH to 40 CFR part 63.

We added refiners to the definition of affected source to clarify that these sources are part of the affected source and were part of the MACT analysis for the PCWP source category. (For new and existing pressurized refiners, we determined that MACT is based on the use of incineration-based control or a biofilter, and for new and existing atmospheric refiners, we determined that MACT is no emissions reductions.)

We removed all references to ''plant site'' from the final rule and replaced references to ''plant site'' with the term ''facility'' to eliminate confusion regarding which emission sources constitute the affected source and which emission sources would be considered when making a major source determination. The term ''plant site'' was used only in the proposed definitions of ''affected source'' and ''plywood and composite wood products manufacturing facility.'' Inclusion of the term ''plant site'' in the proposed definition of affected source unintentionally broadened the definition such that emission sources not related to PCWP manufacturing could be construed as being part of the affected source. For example, under the proposed definitions of ''affected source'' and ''plant site,'' if a company operated both a PCWP manufacturing facility and a wood building products surface coating facility at the same site, both operations might be considered to be part of the PCWP affected source because the ''plant site'' would encompass both operations, even though these two operations are regulated under separate NESHAP. We removed the term ''plant site'' from the final rule to clarify that the requirements in the final rule would only apply to the affected source, which is the PCWP manufacturing facility. However, we note that any major source determination would be based on total emissions from both operations since the two operations are colocated and under common control. (See definition of major source in the General Provisions (40 CFR part 63, subpart A).)

We did not incorporate the commenters' suggestion to specifically exclude boilers from the definition of ''affected source'' because it is possible for a boiler to be subject to both the PCWP NESHAP and the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP (*e.g.*, if a portion of the boiler exhaust is used to direct fire dryers while the remaining portion of the boiler exhaust is vented to the atmosphere). However, in most cases, combustion units would only be subject to one MACT. The overlap between the PCWP NESHAP and the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP is also discussed in this preamble.

2. Process Definitions

Comment: Commenters recommended that a number of definitions included in the proposed rule be revised to better distinguish between particleboard, MDF and hardboard and/or to be consistent with definitions developed by the American National Standards Institute (ANSI).

Response: We made changes to several of the proposed process-related definitions including the definitions of particle, fiber, hardboard, MDF, and particleboard. These minor changes incorporate some of the wording in similar definitions used by ANSI but do not affect the scope or applicability of the final rule. We also added a definition of agricultural fiber recommended by commenters because the term ''agricultural fiber'' appears in the definition of plywood and composite wood products facility.

Comment: Several commenters requested that the proposed definition of tube dryer be changed so that stages in multistage tube dryers would be considered as separate tube dryers. With this change, different control options could be applied to different dryer stages.

Response: Under the proposed definition of tube dryer, a multistage tube dryer with more than one control

device and emissions point would be considered one process unit. In developing the proposed rule, we noted that the function of tube dryers is the same regardless of single-or multistage configuration and that distinguishing between dryer configurations would not change the results of the MACT floor analysis, despite the fact that the majority of the HAP emissions exhaust from the primary stage. Therefore, we made no distinction between single-stage and multistage tube dryers at proposal. However, we agree with the commenters that defining the stages of multistage tube dryers separately would allow facilities the flexibility of choosing different compliance options for each stage of the tube dryer, and we have included separate definitions of primary tube dryer and secondary tube dryer in the final rule. The MACT floor for both primary tube dryers and secondary tube dryers is the same (*e.g.*, 90 percent reduction in emissions), but facilities may choose different control options for the primary and secondary tube dryers. For example, a facility with a multistage tube dryer could use an add-on control device to reduce emissions from the primary tube dryer only and then use emissions averaging to offset the uncontrolled emissions from the secondary tube dryer.

3. Lumber Kilns

Comment: We received comments from representatives of sawmills and wood treating facilities disagreeing with the inclusion of lumber kilns in the PCWP source category. The commenters stated that owners and operators of kilns that are not located at a PCWP facility may be subject to other requirements of the rule, as proposed, that do not truly apply to them, including costly monitoring, recordkeeping, and reporting. One commenter was concerned that the owners and operators of non-colocated lumber kilns could find themselves in violation of the May 15, 2002, case-by-case ''MACT Hammer'' deadline even though they did not anticipate being included in the rule, as proposed, and thus did not apply for the case-by-case consideration.

Response: At proposal, we broadened the PCWP source category to include non-colocated lumber kilns (*i.e.*, lumber kilns located at stand-alone kiln-dried lumber manufacturing facilities or at any other type of facility). In the preamble to the proposed rule, we noted that if non-colocated lumber kilns were not included in the PCWP NESHAP, then kiln-dried lumber manufacturing could be listed as a major source category under section 112(c) of the CAA in the future, requiring a separate CAA section 112(d) rulemaking and potentially becoming separately subject to the provisions of section 112(g) of the CAA as well. We felt it was reasonable to include non-colocated lumber kilns in the PCWP source category because the design and operation of lumber kilns are essentially the same regardless of whether the kilns are located at a sawmill or are colocated with PCWP or other types of manufacturing operations. At proposal, we noted that there are no currently applicable controls at any lumber kilns and that it would be both more efficient and expeditious to include all lumber kilns in the MACT analysis for the final PCWP rule than to separately address them in a rulemaking that likely would not result in meaningful emissions reductions from lumber kilns. In addition, we noted that including all lumber kilns in the final PCWP MACT results in placing them on a faster schedule for purposes of future residual risk analysis under CAA section 112(f).

In an attempt to better understand the concerns of the commenters, we met with wood products industry representatives who requested that lumber kilns be included in the PCWP source category and with the commenters who disagreed that non-colocated lumber kilns should be included in the PCWP source category. After consideration of concerns expressed by all of the commenters on this issue, we maintain that it is more efficient for EPA, State regulators, and lumber kiln operators for EPA to include all lumber kilns in the final PCWP NESHAP. Because the MACT floor determination for lumber kilns is no emission reduction (as explained in the proposal preamble), there will not be a significant monitoring, recordkeeping, and reporting burden for facilities with only non-colocated lumber kilns. Only those facilities that are major sources of HAP emissions are subject to the final PCWP NESHAP. Facilities with non-colocated lumber kilns that are classified as major sources of HAP must submit an initial notification form required by the final PCWP NESHAP and the Part 1 ''MACT Hammer'' application required by section 112(j) of the CAA. We note that both of these forms simply ask the facilities to identify themselves to EPA. We acknowledge that operators of non-colocated lumber kilns were not aware that they were included in the PCWP source category until the proposed PCWP NESHAP was printed in the **Federal Register** on January 9, 2003, and therefore, would not have known to submit a Part 1 application by May 15, 2002.

4. Regulated HAP

Comment: One commenter objected to the fact that the proposed rule only set standards for six HAP. The commenter asserted that, according to the CAA and *National Lime Ass'n* v. *EPA,* 233 F.3d 625, 633–634 (D.C. Cir. 2000), we are required to set standards for every HAP listed in CAA section 112(b)(1) emitted by PCWP operations, not just the ones that are the easiest to measure. Other commenters disagreed and noted that a requirement that EPA impose an emission standard for every listed HAP, without regard to whether or not there are applicable methods for reducing HAP emissions or whether the MACT floor sources actually use such method, contradicts the plain language of the statute. These commenters contended that the statute specifically frames the inquiry in terms of degrees of reduction.

Response: Today's final PCWP rule contains numerical emission limits in terms of methanol, formaldehyde, THC, or total HAP (which is defined in the final rule as the sum of six HAP including acrolein, acetaldehyde, formaldehyde, methanol, phenol, and propionaldehyde). The nationwide PCWP emissions of total HAP are 18,190 tons/yr, which is 96 percent of the nationwide emissions of all HAP (19,000 tons/yr) emitted by PCWP facilities. The six HAP that comprise total HAP are found in emissions from all PCWP product sectors that contain major sources and in emissions from most process units. At proposal, when we stated that other HAP are emitted ''in low quantities that may be difficult to measure,'' we were referring to HAP that are often emitted at levels below test method detection limits (68 FR 1276, January 9, 2003). Our data clearly show that these other HAP are difficult or impossible to measure because they are either emitted in very low quantities or are not present. Such low quantities are not detectable by the applicable emission testing procedures (which are sensitive enough to detect HAP at concentrations below 1 part per million (ppm)). Many of these other HAP were detected in less than 15 percent of test runs, or for only one type of process unit.

Based on our emissions data, we determined that methanol, formaldehyde, THC, or total HAP are appropriate surrogates for measuring all organic HAP measurably-emitted by the PCWP source category. The PBCO and emissions averaging compliance options in today's final PCWP rule are based on total HAP. Review of the emission

factors used to develop the emissions estimates for the PCWP source category indicates that uncontrolled emissions of HAP (other than the six HAP) are always lower than emissions of the six HAP for every process unit with MACT control requirements. Thus, process units meeting the PBCO based on total HAP also would have low emissions of other organic HAP. The emissions averaging provisions and add-on control device compliance options involve use of add-on APCD. The available data show that a reduction in one predominant HAP (or THC) correlates with a reduction in other HAP if the other HAP is present in detectable quantities and at sufficient concentration. The data also show that the mechanisms in RTO, RCO, and biofilters that reduce emissions of formaldehyde and methanol reduce emissions of the remaining HAP. In addition, an analysis of the physical properties of the organic HAP emitted from PCWP processes indicates that nearly all of the HAP would be combusted at normal thermal oxidizer operating temperatures. Today's standards are based on the use of add-on control devices because the available emissions data do not reveal any process variables that could be manipulated (without altering the product) to achieve a quantifiable reduction in emissions. Furthermore, nothing in the data suggests that process variables could be manipulated in a way that would alter the relationship between formaldehyde and methanol reduction and reduction of other HAP. We determined that it is appropriate for the final PCWP rule to contain compliance options in terms of total HAP, THC, formaldehyde, or methanol because the same measures used to reduce emissions of these pollutants also reduce emissions of other organic HAP.

B. Overlap With Other Rules

1. Overlap With Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP

Comment: Commenters expressed support for our proposal to regulate emissions from combustion units used to direct fire dryers and to exclude these emissions from the requirements of the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP. However, the commenters expressed concern about potential NESHAP applicability questions that could arise during short periods when the exhaust gases from these combustion units are not exhausting through the dryers and would bypass any controls applied to these dryers. The commenters noted that in some of the combustion units associated with direct-fired dryers, a small percentage of combustion gas is routed to indirect heat exchange and then is normally and predominantly routed to direct-fired gas flow. According to the commenters, in these hybrid units, typically only a small fraction of combustion gas (*e.g.*, less than 10 percent of total capacity) is routed to indirect heat exchange for hot oil/steam generation. This fraction of the combustion unit exhaust then generally exhausts through the direct-fired dryers and the emissions are treated by the add-on control device at the dryers' outlet. However, under certain circumstances (*e.g.*, during startups, shutdowns, emergencies, or periods when dryers are down for maintenance but steam/thermal oil is still needed for plant and/or press heat), some systems may exhaust directly to the atmosphere without passing through the direct-fired dryers and the associated control systems. The commenters recommended that this small subset of combustion units be assigned a primary purpose (based on the predominant allocation of British thermal units per hour (Btu/hr) capacity and/or predominant mode of operation) and regulated accordingly. In the above example, the commenters assumed that the primary purpose is as a direct-fired dryer, such that the equipment would be subject to the final PCWP MACT and not to the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP.

Response: In considering the commenters' request, we reviewed available information on direct-fired dryers and the associated combustion units at PCWP facilities. The available information indicates that there are many configurations of combustion units, dryers, and thermal oil heaters in the PCWP industry. While some systems have the hybrid configurations described by the commenters whereby a portion of the combustion gas is routed to indirect heat exchange, other systems retain all of the combustion gas within the direct-fired system. We do not have sufficient information (and no such information was provided by the commenters) to fully evaluate the need for a primary purpose designation for PCWP combustion units, to establish the percentage-of-operating-time or British thermal unit (Btu) limits for such a primary purpose designation, or to determine MACT for combustion units that would meet the primary purpose designation. For example, we do not know how many combustion units are configured to incorporate both indirect and direct heat exchange, and for these units we do not know the amount of time or the percentage of Btu allocation that is devoted to indirect heat exchange or the controls used to reduce emissions during indirect heat exchange. We expect that all of these factors vary substantially from facility to facility for those facilities that have these hybrid combustion units. We also lack information on the emissions reduction techniques (*e.g.*, control devices) applied to combustion units associated with direct-fired PCWP dryers that may bypass the dryers for some unknown percentage of time. Therefore, we feel it would be inappropriate for us to establish a primary purpose designation which could inadvertently allow facilities to configure their systems to direct a portion of their uncontrolled emissions to the atmosphere without these emissions' being subject to the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP. Also, we wish to clarify that the final PCWP rule regulates only that portion of emissions from a combustion unit that are routed through the direct-fired dryers. Any emissions from a combustion unit that are not routinely through the direct-fired dryers would be subject to the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP. Therefore, if the emissions from a combustion unit are split such that only a portion of the emissions are routed through a direct-fired dryer, then the combustion unit would be subject to both rules.

For those occasions when a facility must shut down its direct-fired dryers but still wants to operate the combustion unit to heat oil for the press, the facility could propose in its startup, shutdown, and malfunction (SSM) plan to route exhaust through the thermal oil heater (and then to the atmosphere) during these periods. The permitting authority would then decide on a facility-specific basis if heating of the thermal oil heater (and the associated uncontrolled emissions) should be allowed during dryer SSM considering the amount of time that this condition occurs, the fraction of combustion unit Btu used to heat the thermal oil heater, and the type of control used to reduce combustion unit emissions.

2. Overlap With Wood Building Products (WBP) NESHAP

Comment: Commenters on the proposed Wood Building Products (Surface Coating) rule (subpart QQQQ to 40 CFR part 63) asserted that neither asphalt-coated fiberboard nor ceiling tiles are coated with HAP-containing

materials and that regulating such products would be burdensome. These commenters requested that we include asphalt coating of fiberboard and ceiling tiles in today's final PCWP rule by including these coating operations under the definition of miscellaneous coating operations (for which the proposed MACT was no emissions reductions), so that these operations would be subject to the final PCWP rule and not the WBP rule, as proposed.

Response: In the proposed rule, we addressed overlap between the WBP and PCWP NESHAP by including specific surface coating activities (which occur onsite at a PCWP manufacturing facility) in the definition of ''miscellaneous coating operations.'' Inclusion of these activities in the definition of miscellaneous coating operations means that these activities are subject to the final PCWP rule and not to the WBP rule, as proposed. We made changes to the definition of miscellaneous coating operations in today's final rule in response to the public comments we received on the proposed WBP rule relating to asphalt-coated fiberboard and ceiling tiles.

We evaluated the types of coatings and processes used to make asphalt-coated fiberboard and found that only a few facilities in the United States make these products, with varying manufacturing and coating processes. An asphalt emulsion can be added during the fiberboard forming process, or asphalt can be applied to the fiberboard substrate. Information we collected on asphalt coatings suggests that they contain no HAP. Depending on the company and the process, the coating can be applied before or after the final dryer with the product allowed to air dry. Ceiling tiles are usually coated using non-HAP slurries of titanium dioxide and various clays, and no organic solvents are used. Most of the coatings associated with these types of products are applied during the substrate forming process (*i.e.*, 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). Because no HAP are contained in the above-mentioned coatings, the coatings are applied as part of the manufacturing process, and MACT for these coating processes is no emissions reductions, we changed the definition of miscellaneous coating operations to include ''application of asphalt, clay slurry, or titanium dioxide coatings to fiberboard at the same site of fiberboard manufacture.'' These products are not subject to the final WBP surface coating rule.

C. Amendments to the Effluent Guidelines for Timber Products Processing

Comment: Several commenters requested that we address potential conflicts between the PCWP rule as proposed and the effluent guidelines for the Timber Products Processing Point Source Category. These commenters noted that the effluent guidelines state that ''there shall be no discharge of process wastewater pollutants into navigable waters.'' However, according to the commenters, at the time that statement was written, air pollution controls were not common, and EPA was not aware of the large volumes of water that can be produced by APCD. The commenters recommended that we address this issue by revising the effluent guidelines at 40 CFR part 429. Specifically, these commenters asked us to amend the definition of process wastewaters at 40 CFR part 429.11(c) so that the discharge prohibition in 40 CFR part 429 would not apply to wastewaters associated with APCD operation and maintenance when installed to comply with the final PCWP MACT rule. These commenters asserted that effluent limitations for these wastewaters should be developed by permit writers on a case-by-case basis based upon best professional judgment. These commenters noted that the language we included in the preamble to the proposed rule would generally accomplish this purpose with some minor changes (see 68 FR 1276, January 9, 2003). The commenters also provided rationale and data to support their recommendation. The commenters contended that we: (1) Underestimated the volume of wastewater that would be generated by the application of MACT and as a result, underestimated the associated costs of disposing of this wastewater; (2) failed to address the achievability/feasibility of MACT if the discharge of air pollution control wastewaters is prohibited; and (3) did not consider wastewater from air pollution control devices when the Timber Products zero discharge effluent guidelines were originally developed. The commenters submitted several case studies to demonstrate the variability in the volume of wastewater generated at various PCWP facilities and to show how each facility currently recycles, reuses, and disposes of wastewater generated from the operation and maintenance of RTO, WESP and biofilters. The commenters also argued that the available data do not support a conclusion that wastewaters generated from MACT control devices can, with Best Available Technology (BAT), be managed in a way that does not involve a discharge.

Response: At the time we proposed the PCWP rule, we indicated that we would consider amending the definition of process wastewater in 40 CFR part 429 to exclude those wastewaters generated by APCD operation and maintenance when installed to comply with the proposed PCWP NESHAP. We indicated in the preamble to the proposal that we would amend the definition of process wastewaters if information and data were submitted to support the industry's assertions that PCWP facilities in certain subcategories would not be able consistently to achieve the effluent limitations guidelines and standards applicable to them if they were to comply with the proposed PCWP NESHAP. As part of the PCWP proposal, we described with specificity how we would revise 40 CFR part 429 if we were convinced that such revisions were appropriate and solicited data and information.

Based on the data and information submitted by the commenters, we have concluded that facilities subject to 40 CFR part 429, subpart B (Veneer subcategory), subpart C (Plywood subcategory), subpart D (Dry Process Hardboard subcategory), and subpart M (Particleboard Manufacturing subcategory) are unable to comply consistently with the existing 40 CFR part 429 effluent limitations guidelines and standards, which prohibit the discharge of process wastewater pollutants, because of the volume of wastewaters generated by APCD that are installed to comply with the final PCWP NESHAP and because the technology basis for those effluent limitations guidelines and standards is insufficient, in light of that wastewater volume and the pollutant content, to achieve the prohibition on process wastewater discharges for these NESHAP-related APCD wastewaters. Therefore, we are excluding from the definition of process wastewaters in 40 CFR 29.11(c) the following wastewaters associated with APCD used by PCWP facilities covered by subparts B, C, D, and M to comply with 40 CFR 63.22: wastewater from washout of thermal oxidizers and catalytic oxidizers, wastewater from biofilters, and wastewater from WESP used upstream of thermal oxidizers or catalytic oxidizers.

In addition, we agree with comments that we will need considerably more data and information to promulgate new effluent limitations guidelines and standards for the process wastewaters at issue today. In particular, we will need

information to adequately characterize the quantity and quality of wastewater that would be generated as result of compliance with the MACT standards. The volume and pollutant content of wastewater generated at these facilities are related to production processes, air pollution control equipment that generate wastewater, the extent of opportunities for internal recycling of wastewater, and the availability of other process uses for wastewater. Until we promulgate effluent limitations guidelines and standards for pollutants in these process wastewaters, Best Practicable Technology (BPT) and BAT effluent limitations should be established on a case-by-case basis under 40 CFR 125.3. Thus, individual facilities seeking a discharge permit will have the opportunity, on a case-by-case basis, to characterize and obtain discharge allowances for their wastewaters from APCD installed to comply with the final PCWP NESHAP. The permit writer would be expected to determine, based upon best professional judgment (BPJ), the appropriate effluent limitations for these APCD wastewaters. (*See* 40 CFR 125.3.) The permit writer can take into account facility-specific information on wastewater volumes and pollutants, available wastewater control and treatment technologies, costs and effluent reduction benefits, receiving water quality, and any applicable State water quality standards. At a later date, we expect to consider whether to amend the existing effluent limitations guidelines and standards for the Timber Processing Industry to cover these process wastewaters. Such an effort would involve gathering and analyzing the information and data necessary to establish revised categorical effluent limitations affecting subparts B, C, D, and M of 40 CFR part 429 for these APCD wastewaters generated in complying with the final PCWP NESHAP.

Today's amendment to the final rule is based on regulatory language included in the preamble accompanying the proposed NESHAP for PCWP facilities (68 FR 1276, January 9, 2003). The preamble described the relationship of the proposed MACT rule to the amendment to 40 CFR part 429 under consideration. The preamble explained that the entities affected by the proposed MACT rule would also be affected by the proposed amendment to 40 CFR part 429; presented both the terms and substance of the amendment under consideration; and described the subjects and issues involved. In addition, we solicited comments on whether to amend 40 CFR 429.11(c) and information relevant to that decision. While at that time we indicated that we were considering employing a direct final rule to promulgate any such amendment, we have concluded with support from commenters that that procedure was unnecessary and instead are taking final action on the amendment today without further process.

D. Existing Source MACT

1. OSB Strand Dryers

Comment: One commenter requested that further consideration be given to the emission standards for low-temperature OSB conveyor strand dryers. The commenter stated that because these conveyor strand dryers emit less HAP than rotary strand dryers and have been recognized as best available control technology (BACT) in Minnesota, they should be exempted from control requirements in the final PCWP rule. The commenter noted that the 12 conveyor strand dryers used by their company have three drying zones, each with its own heating system and exhaust vent(s). When drying hardwoods, no VOC control is required; however, when drying pine the company controls emissions from zones 1 and 2. Zone 3 serves as a final conditioning zone and is exhausted to the atmosphere without need for VOC control. The proposed PCWP rule would have required the sum of the emissions from all three zones to be reduced to MACT levels (*e.g.*, 90 percent reduction).

Response: The MACT analysis we conducted at proposal treated conveyor strand dryers as a separate equipment group from rotary strand dryers. We noted that rotary strand dryers operate at much higher inlet temperatures (*e.g.*, often greater than or equal to 900°F) than conveyor strand dryers (*e.g.*, typically less than 400°F) and that rotary dryers provide greater agitation of the wood strands than conveyor strand dryers. As a result, the emissions from conveyor strand dryers are lower than the emissions from rotary strand dryers. The emissions test data we have for conveyor strand dryers (only formaldehyde and THC data are available) indicate that formaldehyde emissions from conveyor strand dryers are 1 to 2 orders of magnitude lower than for rotary strand dryers. The THC emissions are also lower for conveyor strand dryers than for rotary dryers. Our MACT analysis for conveyor strand dryers at proposal concluded that three of the eight conveyor strand dryers used in the U.S. operated with process incineration. Because there are less than 30 conveyor strand dryers, the MACT floor was based on the control level achieved by the third best-controlled dryer. Thus, at proposal, we determined that the MACT floor control system for new and existing conveyor strand dryers was the emissions reductions achievable with incineration-based control. We included one definition of ''strand dryers'' in the proposed PCWP rule since MACT for both rotary and conveyor strand dryers was represented by incineration-based control.

As pointed out by the commenter, conveyor strand dryers have distinct zones, with each zone having its own heating system and exhaust. We reviewed our MACT survey data and learned that all of the conveyor strand dryers in the U.S. have three zones. Upon further scrutiny of the MACT analysis at proposal, we learned that the three conveyor strand dryers that formed the basis for the MACT floor at proposal were routing the emissions from zone 1 only to an onsite combustion unit for incineration. The remaining five conveyor strand dryers have no HAP control. Thus, our conclusions regarding the MACT floor for conveyor strand dryers at proposal were overstated. The third best-controlled conveyor strand dryer has incineration-based control only on zone 1 as opposed to controls on all zones. Therefore, we revised our analysis to reflect that the MACT floor for existing conveyor strand dryers is the emissions reduction achievable with incineration-based control on zone 1. To implement this change, we added definitions for ''conveyor strand dryer'' and ''conveyor strand dryer zone'' to the final rule.

The commenter mentioned operating 12 conveyor strand dryers. Six of these conveyor strand dryers are located at new plants that were not included in our pre-proposal MACT floor analysis. These six conveyor strand dryers route emissions from zones 1 and 2 to a closed-loop incineration system for emissions control. Given that newer facilities are incinerating conveyor strand dryer exhaust from zones 1 and 2, we determined that the MACT floor for conveyor strand dryers at new sources is the emissions reductions achievable with incineration-based control for exhausts from zones 1 and 2.

As described in the promulgation BID and supporting documentation, we determined that the environmental benefit of controlling additional conveyor dryer zones would not justify the cost for existing or new conveyor strand dryers.

2. Wood Products Press Enclosures

Comment: Many commenters argued that EPA Method 204 compliance should not be a part of the PCWP MACT floor for presses because most of the press enclosures that were described in the industry survey data as having permanent total enclosures (PTE) were never certified by Method 204 criteria. The commenters noted that most of these enclosures were designed according to Method 204 design criteria; however, the permits for these facilities never required them to comply fully with Method 204 certification. The commenters contended that, of the 26 presses identified as having PTE, only 2 had actually undergone Method 204 certification.

The commenters also argued that Method 204 cannot be applied practically to the hot presses that are used at PCWP facilities. The commenters stated that Method 204 was developed for applications where the emissions have consistent properties; however, the temperature and density of emissions from a typical multiple-opening batch wood products press are constantly changing as the press opens and closes, which creates layers of gases with different physical properties within the enclosure. According to the commenters, instead of mixing and exiting the enclosure, the layers of gases can accumulate. The layers of gas in the upper region of the enclosure have a higher temperature and pressure than the air outside the press, and the lower layers of gas have a lower temperature and pressure than the air outside the press. The commenters maintained that to force the gases outside the enclosure, the operator would have to increase the airflow through the system to a rate that is three to four times higher than would be necessary for an enclosure operating at a homogenous temperature and pressure. The commenters contended that, while many of the wood products presses were designed to follow the Method 204 design criteria, they were not designed to overcome this phenomenon and may not be able to certify that all of the emissions are captured and contained.

The commenters recommended that we address the press capture efficiency issue by implementing work practice requirements for enclosures. The commenters suggested that we replace the proposed definition of PTE with a definition that includes four of the five design criteria found in EPA Method 204, and replaces the requirement that ''all VOC emissions must be captured and contained for discharge through a control device'' with a requirement that ''fugitive emissions shall be minimized through appropriate operation and maintenance procedures applied to the PTE system.''

Response: At proposal, we stated that the MACT floor determination for reconstituted wood products presses was based, in part, on the assumption that a sufficient number of these presses had enclosures that had been certified as PTE according to EPA Method 204. Presses equipped with Method 204 certified PTE would be allowed to claim 100 percent capture efficiency, and thus, the rule requirements (*e.g.*, 90 percent emissions reductions) would effectively apply only to the captured emissions.

Based on our review of available permit information, we agree with the commenters' assessment that few permits have required full Method 204 certification for reconstituted wood products press enclosures, even though many of these press enclosures were constructed based on the Method 204 design criteria. We also agree that the nature of the batch pressing operations in the PCWP industry can make Method 204 certification difficult. Unlike in the printing and publishing industry, for which Method 204 was originally developed, batch PCWP presses are heated, cyclical operations. Because of the internal pressurization within PCWP press enclosures, small amounts of fugitive emissions may appear around the outside of these enclosures. The percentage of press emissions that may be escaping from some of these enclosures has not been quantified but is expected to be small based on available information. We understand the commenters' concern that, due to the presence of these small amounts of fugitive emissions, facilities cannot certify that their Method 204 designed press enclosure can achieve all the Method 204 criteria, in particular the criteria in Method 204 section 6.2 which states that ''All VOC emissions must be captured and contained for discharge through a control device.'' While we feel that PCWP press enclosures should be designed to capture emissions under normal operating conditions, we do not feel it is necessary for PCWP facilities to increase the flow rate from their press enclosures (and the size of their APCD) three to four times to overcome the pressurization within the press enclosure. For the PCWP industry, we feel it would be particularly inappropriate to require such a large increase in exhaust flow to the APCD because the exhaust flows from PCWP process equipment, including presses, are already high volume, low concentration emission streams. High volume, low concentration exhaust streams generally are more costly to treat than low volume, high concentration emission streams. The best-performing press enclosures that defined the MACT floor surround heated presses and are all expected to have pressurization within the press enclosure. In addition, we note that board cooler exhaust is sometimes directed into press enclosures and that enclosures around board coolers have not been certified according to EPA Method 204.

Therefore, instead of requiring EPA Method 204 certification of PCWP press and board cooler enclosures as proposed, today's final rule sets forth slightly different criteria for press and board cooler enclosures. These criteria are based on the design criteria for PTE included in EPA Method 204, as recommended by the commenters; however, the criterion to capture and contain all VOC emissions has been replaced with a requirement that the enclosure be ''designed and maintained to capture all emissions for discharge through a control device.'' To effect this change, we removed references to PTE in the final rule and replaced the proposed definition of PTE with a new definition of ''wood products enclosure'' that lists the design criteria that must be met to comply with MACT. Enclosures that meet the definition of wood products enclosure do not have to test to determine the capture efficiency of these enclosures, but can assume 100 percent capture, such that the control requirements (*e.g.*, 90 percent reduction) apply only to the captured emissions (*i.e.*, the small amount of fugitive emissions outside the enclosure is disregarded).

We also replaced the proposed definition of ''partial enclosure'' with a slightly revised definition of ''partial wood products enclosure'' to eliminate any references to PTE in the final rule. Because the capture efficiency of partial wood products enclosures is unknown, today's final rule requires facilities to test the capture efficiency of partial wood products enclosures using EPA Methods 204 and 204A–F (as appropriate), or using the alternative tracer gas procedure included in appendix A to subpart DDDD of 40 CFR part 63. In addition, facilities have the option of using other methods for determining capture efficiency subject to the approval of the Administrator. As was proposed and suggested by the commenters, today's final rule requires facilities using partial wood products enclosures to demonstrate a combined 90 percent capture and control efficiency for those facilities showing

compliance with the percent reduction requirements for APCD. If the partial wood products enclosure does not achieve high capture efficiency, then facilities must offset the needed capture efficiency by achieving a higher destruction efficiency or with emissions averaging (with the press being an under-controlled process unit).

Comment: One commenter objected to the proposed MACT floor for continuous presses and questioned the applicability of EPA Method 204 to continuous presses. The commenter requested that we divide continuous and batch presses into two different process unit groups for the purpose of determining the MACT floor. The commenter provided information from environmental engineering firms and press manufacturers regarding the fundamental differences between the two types of presses. The commenter noted that continuous presses are much longer than batch presses, reaching lengths of 200 feet (ft), which makes them difficult to completely enclose. The commenter was unaware of any continuous presses that have Method 204 certified PTE. The commenter stated that enclosing a continuous press would cause operational problems, such as heat build-up and impaired visibility, which can lead to mechanical failures and unscheduled downtime. The commenter also cited potential safety concerns, such as increased fire risk and the possibility of unhealthy levels of HAP trapped inside the enclosure. The commenter further noted that the capital and operating costs of PTE applied to continuous presses would exceed those associated with batch presses due to the large size of the enclosure and the increased maintenance costs resulting from heat build-up within the enclosure. In addition, the commenter provided VOC emissions data based on measurements made at different points along the length of one of their continuous presses to demonstrate that emissions from the front stages are minimal and that the majority of emissions are from the last 40 percent of the press length, referred to as the ''decompression zone.'' The commenter contended that gathering the emissions from all stages of the continuous press will result in a more dilute stream, which will be less cost-effective to treat, and that the large volume of exhaust to be treated would likely preclude the use of biofilters, which are more practical for treating smaller volumes of air.

To remedy the situation, the commenter recommended that we divide batch and continuous presses into two different process unit groups for the purpose of determining the MACT floor. Because there are fewer than 30 continuous presses, the MACT floor for existing continuous presses would be determined based on the average emissions limitation achieved by the five best-performing continuous presses. The commenter provided information to support the commenter's contention that none of the continuous presses achieved 100 percent capture and suggested that the MACT floor for capture efficiency is 80 percent capture of emissions from the decompression stages.

Response: As explained in the proposal preamble, we based the MACT floor determinations for PCWP equipment on process units that are similar with respect to design, operation, and emissions. We acknowledge that continuous presses have a different design than multiopening batch presses. However, continuous presses have emissions that are within the same range as those from batch presses on a lb/MSF of board basis. Therefore, we feel it is reasonable to group batch and continuous presses together for purposes of determining the MACT floor. The MACT floor for continuous presses would be the same as the MACT floor for batch presses regardless of whether batch and continuous presses were placed in separate equipment groups. As explained below, we disagree that the MACT floor capture efficiency for continuous presses is 80 percent, as suggested by the commenter.

The commenter was incorrect in suggesting that there are no continuous presses with Method 204 certified PTE. The two existing press enclosures in the PCWP industry identified as being Method 204 certified surround continuous presses. The lengths of these two continuous presses are 41.5 ft and 110 ft. Due to the presence of these presses plus additional continuous presses equipped with total enclosures not certified via Method 204, the MACT floor for new and existing continuous presses is still a total enclosure and incineration-based control or biofilter, regardless of whether or not batch and continuous presses are treated as separate equipment groups. In addition, there is a Method 204 certified PTE around a 181-ft continuous press at a newer PCWP facility (which was not included in original data collection efforts and the pre-proposal MACT floor determination); however, this press has had some operational problems associated with its PTE. It is not clear if the operational problems experienced by this 181-ft-long press are the result of poor PTE design or inherent technical difficulties associated with enclosing long continuous PCWP presses.

Long continuous presses are generally being installed at new PCWP facilities, as opposed to being retrofit at existing facilities. Given that there is at least one long continuous press (110 ft) with a Method 204 certified PTE that has not experienced operational problems with its press enclosure, we feel that wood products enclosures (as defined in today's final rule) can be designed around long continuous presses. We recognize that higher cost may be associated with wood products enclosures around long continuous presses than for batch presses, but the CAA does not allow us to consider cost at the MACT floor control level.

We note that enclosures greater than 200 ft in length are common in the printing/publishing industry. However, we do recognize there are differences in the enclosures used in the printing/publishing industry and those in the PCWP industry. Although not cyclical in operation like batch presses, continuous presses are heated operations and may also have internal pressurization issues similar to those raised by the commenters for batch presses. Therefore, we feel it is appropriate for the same definition of wood products enclosure promulgated for batch presses to apply to long continuous presses as well (as opposed to Method 204 certification).

3. MACT Floor Determinations of No Emissions Reductions

Comment: Industry commenters supported our proposed MACT floor determinations of no emissions reductions for some process units, arguing our approach was fully consistent with applicable case law in the U.S. Court of Appeals for the D.C. Circuit. EPA properly determined that the average of the best-performing 12 percent of certain existing PCWP process units did not reflect the use of any control technology, and that no other universally applicable variables would affect HAP emissions, industry commenters stated. The commenters also claimed that EPA looked at pollution prevention (P2) measures and other approaches to determining the MACT floor, found none that are universally applicable, and therefore was permitted to base a no emissions reduction floor on the PCWP record.

Response: As explained in the proposal preamble and supporting documentation, for those process units not required to meet the control requirements in the PCWP rule as proposed, we determined that: (1) the MACT floor level of control is no

emissions reductions, and beyond-the-floor control options are too costly to be feasible; or (2) insufficient information is available to conclude that the MACT floor level of control is represented by any emissions reductions. We based our MACT floor determinations for PCWP emission sources on the presence or absence of an add-on air pollution control device because we are not aware of any demonstrated P2 techniques that can be universally applied across the industry, and we have no information on the degree of emissions reduction that can be achieved through P2 measures. Therefore, to our knowledge the use of add-on controls is the only way in which PCWP sources can currently limit HAP emissions, and the only way to identify the MACT floor for these sources is to identify a level that corresponds to that achieved by the use of add-on controls. When determining the MACT floor, we ranked the process units by control device rather than by actual unit-specific emissions reductions because we have limited inlet/outlet emissions data. Based on the available information, we are not aware of any significant design or operational differences among each type of control system evaluated that would affect the ranking of process units. Furthermore, we are not aware of factors other than the type of control system used that would significantly affect the ranking of process units. An analysis of the available emissions data does not reveal any process variables that can be manipulated (without altering the product) to achieve a quantifiable reduction in emissions. Ranking process units according to control device, we determined that the MACT floor is no emissions reductions for several process unit groups including press predryers, fiberboard mat dryers, and board coolers at existing affected sources; and dry rotary dryers, veneer redryers, softwood plywood presses, hardwood plywood presses, engineered wood products presses, hardwood veneer dryers, humidifiers, atmospheric refiners, formers, blenders, rotary agricultural fiber dryers, agricultural fiber board presses, sanders, saws, fiber washers, chippers, log vats, lumber kilns, storage tanks, wastewater operations, miscellaneous coating operations, and stand-alone digesters at new and existing affected sources. As explained in the promulgation BID and supporting documentation, we also determined that beyond-the-floor control options are too costly for these process unit groups.

At proposal, we requested comment on whether no emissions reductions for miscellaneous coating operations and for wastewater operations is appropriate (68 FR 1276, January 9, 2003). We also requested that commenters on this issue submit any information they might have on HAP or VOC emissions from miscellaneous coating operations and wastewater operations. However, no additional information on these operations was received from any of the commenters on the proposed rule. Following proposal, we reviewed our MACT analyses for miscellaneous coating and wastewater operations, as described in the following paragraphs and in the promulgation BID and supporting documentation. For miscellaneous coating operations, we gathered some additional information and were able to revise our conclusions regarding MACT in the absence of specific information on the emissions reduction achieved. However, we have no more reason to feel now than we did at proposal that PCWP wastewater operations are in fact subject to any emission control measures.

Based on the available information, we have no basis to conclude that the MACT floor for new or existing sources is represented by any emission reductions for several of miscellaneous coating processes (*i.e.*, anti-skid coatings, primers, wood patches applied to plywood, concrete forming oil, veneer composing, and fire retardants applied during forming), and we determined that there are no cost-effective beyond-the-floor measures to reduce HAP from these coating processes. However, some facilities reported use of water-based (non-HAP) coatings in their MACT survey responses for other types of coatings (including edge seals, nail lines, logo paint, shelving edge fillers, and trademark/gradestamp inks). Other facilities reported use of solvent-based coatings for these processes. In some instances, a few respondents provided information on the percent HAP content of a solvent-based coating. Solvent-based coatings do not always contain HAP (*e.g.*, the solvent may be mineral oil which does not contain HAP), and water-based coatings typically do not contain HAP. Thus, many of the coatings reported in the MACT survey responses are non-HAP coatings. While the emission reduction achieved as a result of coating substitutions cannot be determined, it is clear that use of non-HAP coatings represents the MACT floor because of the large number of facilities reporting use of non-HAP coatings. Beyond-the-floor options were not considered for edge seals, nail lines, logo paint, shelving edge fillers, and trademark/gradestamp inks because no further emissions reductions can be achieved than through use of non-HAP coatings. Based upon our revised MACT analysis, the final PCWP rule requires use of non-HAP coating for processes identified as group 1 miscellaneous coating processes.

The definition of non-HAP coating included in the final rule was based on the description of non-HAP coatings in the final WBP NESHAP (subpart QQQQ to 40 CFR part 63). This definition allows for unavoidable trace amounts of HAP that may be contained in the raw materials used to produce certain coatings. Through the definition of group 1 miscellaneous coatings in the final rule, kiln-dried lumber is excluded from the requirement to use non-HAP coatings because application of coatings used at kiln-dried lumber manufacturing facilities is not part of the PCWP source category. Although trademarks/gradestamps are applied to kiln-dried lumber, lumber kilns are the only processes at kiln-dried lumber manufacturing facilities covered under the PCWP source category.

For wastewater operations, we concluded that we had insufficient information to conclude that the MACT floor level of control is represented by any emissions reductions. The available information on wastewater operations collected as part of the MACT survey of the PCWP industry and information contained in State permits indicated that these sources of emissions were not the subject of control requirements and were not expected to be significant sources of HAP or VOC emissions. As stated above, we received no comments containing additional information on emissions reduction measures or HAP/VOC emissions from wastewater operations. Thus, we have no more reason to feel now than we did at proposal that PCWP wastewater operations are in fact subject to any control measures. As a result, since no information shows that these PCWP operations use add-on controls, there is no identifiable numerical emissions level that would correspond to a MACT floor level reflecting the use of controls, and the only floor level demonstrable based on current data is no emissions reduction. Furthermore, given that our best data show that the emissions from wastewater operations are less than 1 ton/yr, we concluded that application of the control measures mentioned above would not be cost effective beyond-the-floor options. In response to the commenter's objection to the incompleteness of the data set for these PCWP operations, we note that the D.C. Circuit does not require EPA to obtain complete data as long as we are able to otherwise estimate the MACT floor

(*Sierra Club* v. *EPA,* 167 F.3d 658,662 (D.C. Cir. 1999)). Unlike dryers and presses at PCWP plants, wastewater operations have not been subjected by permitting authorities to controls for HAP emissions. We expended much effort in the early stages of the project gathering complete and accurate information on the PCWP processes with the most potential for HAP emissions and the greatest potential for emission control (*i.e.*, the processes that have been the focus of permit requirements limiting HAP/VOC emissions) and the final PCWP rule addresses emissions from these process units.

Had we been given reason to feel that there were emissions control measures associated with wastewater operations, we would have gathered more information for these processes earlier in the project. Even though we have determined that the current MACT floor for these PCWP operations is no emission reduction, since available information indicates they are not controlled, the HAP emissions from wastewater operations (and other PCWP sources with MACT determinations reflecting no emissions reductions) will be considered further when we review residual risk as required under section 112(f).

E. New Source MACT

Comment: One commenter objected to our determination that MACT is the same degree of control for new and existing sources for many process units based on the fact that the best technology is the same for new and existing sources (*i.e.*, incineration-based controls or biofilters). The commenter pointed out that, according to the proposal BID, the maximum percent control efficiency is in the upper 90s for THC, formaldehyde, and methanol. The commenter noted that the CAA requires the MACT floor to be based on the degree of emissions reduction achieved in practice by the best-controlled similar source. Thus, the commenter requested that we revise the new source MACT requirements for process units based upon the greatest reductions recorded.

Response: As explained in the preamble to the proposed rule and supporting documentation, the MACT floor for both new and existing sources is based on the estimate of the performance achieved through application of RTO, RCO, or biofilters. We acknowledge that some incineration-based controls and biofilters can achieve greater than 90 percent reduction in HAP or THC during a single performance test or a test run within a performance test. However, we also recognize that the percent reduction achieved can vary according to pollutant inlet concentration, a factor that is not directly controllable from a process or control device standpoint. Other unknown factors may also cause variability in control system performance. For example, we have THC percent reduction data for an RTO used to control emissions from three tube dryers and a press at an MDF plant for two emission tests conducted at different times. In 1996, the RTO achieved 92.7 percent reduction of THC, and in 1998 the same RTO achieved 98.9 percent reduction of THC. In addition, we have emissions test data for the same process unit and control system for multiple years, and these data show different emission factors, indicating that variability is inherent within each process unit and control system combination. Thus, we estimate that the best MACT technology achieves 90 percent HAP reductions when variations in operations and measurements are considered.

F. Definition of Control Device

Comment: Several commenters requested that we add scrubbers and adsorbers to the proposed definition of ''control device'' and that condensers be omitted from the definition. One of the commenters operates a particleboard press that is equipped with a condenser that condenses steam from the press exhaust and then routes the condensate to an onsite wastewater treatment system. The remaining noncondensed gases are combusted in an onsite boiler as supplemental fuel. This commenter would like to be able to comply with the PBCO for reconstituted wood products presses rather than demonstrate compliance with one of the add-on control system compliance options (*e.g.*, 90 percent emissions reduction) or emissions averaging provisions; however, the commenter noted that PBCO only apply to uncontrolled emission sources. Therefore, the commenter requested that the definition of control device be limited only to those add-on control systems that were designed with HAP removal as the primary goal.

Response: We disagree with the commenters that the proposed definition of control device should be changed. The definition in the final rule does not include scrubbers or absorbers but does include condensers and combustion units that incinerate process unit exhausts. For purposes of MACT standards development, the reason a control device is installed is immaterial. All control devices or techniques that reduce HAP emissions are considered when setting MACT standards. We note that the PBCO were developed and included in the PCWP rule for inherently low-emitting process units or process units with P2 techniques and not for process units with add-on control systems. Therefore, the particleboard press equipped with the condenser and combustion unit described by the commenter cannot comply using the PBCO.

In the proposed PCWP rule, we intentionally omitted absorbers (*e.g.*, wet scrubbers) from the list of potential control devices because these technologies generally are not reliable for reducing HAP emissions. These wet systems may achieve short-term reductions in THC or gaseous HAP emissions; however, the HAP and THC control efficiency data, which range from slightly positive to negative values, indicate that the ability of these wet systems to absorb water-soluble compounds (such as formaldehyde) diminishes as the recirculating scrubbing liquid becomes saturated with these compounds. We wished to limit the examples included in the definition of control device to those devices for which we have data to demonstrate that they are effective in reducing HAP emissions from PCWP facilities. However, we note that the definition includes the phrase ''but not limited to'' and does not exclude other types of controls. We are aware that new technologies (some of which may be adsorption-based or absorption-based) may be developed that effectively reduce HAP emissions from PCWP sources. The definition of control device does not prevent their development or use.

Facilities using wet scrubbers or WESP to meet the add-on APCD or emissions averaging compliance options can petition the Administrator for approval of site-specific operating requirements to be used in demonstrating continuous compliance. Alternatively, facilities using a wet scrubber or WESP may use a THC CEMS to show that the THC concentration in the APCD exhaust remains below the minimum concentration established during the performance test. In addition, facilities using wet control devices (*e.g.*, wet scrubber or WESP) as the sole means of reducing HAP emissions must submit with their Notification of Compliance Status a plan for review and approval to address how organic HAP captured in the wastewater from the wet control device are contained or destroyed to minimize re-release to the atmosphere such that the desired emission reduction is obtained. Because wet scrubbers or WESP are add-on

APCD and have variable effects on HAP emissions, today's final rule specifies that sources cannot use add-on control systems or wet control devices to meet PBCO. As part of this change, we added a definition of ''wet control device'' to today's final rule. We note that PCWP facilities demonstrating compliance with the PBCO for process units equipped with any wet control device that effects HAP emissions must test prior to the wet control device.

G. Compliance Options

1. Add-On Control System Compliance Options

Comment: We received a number of comments related to the six add-on control systems compliance options and how these options might be implemented at an actual PCWP facility. One commenter argued that the use of multiple compliance options for add-on control systems will make it difficult for State agencies to determine if a facility is actually in compliance. The commenter pointed out that, if a facility tested for two options but passed only one, it would still be in compliance. However, the commenter stated that the rule as proposed was unclear whether a facility would be in violation if the facility chose to test for one option, failed that test, and then conducted another test to determine compliance with a different option. The commenter contended that this would constitute a violation of the standard, and any retesting to determine compliance with a different option would not reverse the initial violation. Therefore, the commenter requested that we clarify that the option to use the most beneficial results of two or more test methods applies only when these tests are conducted during a single performance test. According to the commenter, any facility that chose to use only one test method during the compliance test would have to accept the results of that test.

Other commenters argued that a facility should be able to switch among the six add-on control options as needed to maintain compliance. To illustrate the necessity of the ability to switch from one add-on control option to another, the commenters provided an example whereby the operator of a veneer dryer might want to demonstrate compliance with the 90 percent THC reduction option (option 1 in Table 1B to the final rule) under certain operating conditions and with the 20 parts per million by volume (ppmv) THC option (option 2 in Table 1B to the final rule) under other operating conditions. One of the commenters also noted that production starts and stops and minor malfunctions are common at PCWP facilities, and most of them do not affect the performance of the air pollution control device. However, frequent SSM events resulting in a low concentration to the inlet of the control device could affect a facility's ability to comply with the percent reduction option. In this case, the commenter stated that the freedom to switch compliance options would be valuable. For these reasons, the commenters requested that we explicitly state in the final PCWP rule that ''a facility only need comply with any one of the six options at any one time, and that it can change between them as needed to fit process operating conditions.''

Response: We understand the commenters' concerns on this issue and have written the final rule to clarify our intentions regarding how the add-on control system compliance options should be implemented at PCWP facilities. The proposed rule states at 40 CFR 63.2240 that ''You cannot use multiple compliance options for a single process unit.'' We included this provision to prevent PCWP sources from partitioning emissions from a single process unit and then applying different control options to each portion of the emissions stream. The MACT floor determinations and compliance options were all based on the full flow of emissions from process units, and therefore, compliance options should be applied to the same mass of emissions to ensure that the required MACT floor emissions reductions are achieved. When including this restriction, we did not intend necessarily to limit PCWP facilities to only one of the six options for add-on control systems. We did assume that each source would likely select only one option, and that at any point in time for purposes of assessing compliance, the given compliance option would have been pre-selected and reflected as applicable in the source's permit. In fact, in discussions with industry representatives prior to proposal, they expressed concern that the final rule be written to make it clear that a source would only have to comply with one option and not all six.

Based on available data, we expect that most facilities will be able to demonstrate compliance with more than one of the compliance options for add-on control systems. When developing the six compliance options for add-on control systems, we felt that PCWP facilities would conduct emissions testing (*e.g.*, inlet and outlet testing for THC, methanol, and formaldehyde over a range of APCD operating temperatures) and then, based on the results of testing, select the option that provides them with the most operating flexibility as well as an acceptable compliance margin (*i.e.*, select the option that they feel will be easiest for them to meet on a continuous basis under varying conditions). The operating parameter limit to be reflected in the source's permit (*e.g.*, minimum temperature) would be based on the measurements made during the compliant test runs. For example, if test results show that a facility can achieve 90 percent reduction for formaldehyde, 92 percent reduction for methanol, and 94 percent reduction for THC, then the facility may decide to reduce THC emissions by 90 percent, since this option appears to provide the greatest compliance margin. The corresponding operating parameter level measured during the testing (*e.g.*, minimum 15-minute RTO temperature during a three-run test) would then be set as the operating limit in the permit for that source. In this example, if the RTO operating temperature drops below the operating limit, that would be a deviation, and any subsequent retesting done by the facility would presumably be done based on the chosen compliance option (*e.g.*, reduce THC emissions by 90 percent). Determining compliance in this case is relatively straightforward. However, we are aware that State agencies may simply refer to a NESHAP as part of a permit and not stipulate which compliance option the facility must meet. In these cases, we agree with the commenter who was concerned that compliance can be complicated when the referenced NESHAP contains multiple options, and that such a broad reference would not be adequate to identify the particular option (and parameter operating limits) applicable to the source. We also agree that, if a facility selects multiple options under the compliance options for add-on control systems, it should be required to conduct all necessary testing associated with compliance with the selected options concurrently. In addition the facility should obtain permit terms reflecting these options as alternate operating scenarios that clearly identify at what points and under what conditions the different options apply, such that compliance can be determined during a single time frame. For example, if the source wishes to include options 1, 3, and 5 in their permit, then it must perform inlet and outlet testing for THC, methanol, and formaldehyde any time the State agency has reason to require a repeat performance test (if all three options are simultaneously applicable) or test for the single applicable option

that corresponds to the given time and condition (if the options apply as alternate operating scenarios under different conditions). With this approach, we would avoid situations where a facility retests to determine compliance with a compliance option, fails to demonstrate compliance with that option, and then conducts additional testing to determine compliance with other options that are not pre-established as applicable at a later date.

The final rule clarifies our intentions regarding the use of multiple control options with respect to add-on control systems versus the combining of control options for a single process unit. The language in 40 CFR 63.2240 of the final rule has been modified to remove the proposed text stating that a source ''cannot use multiple compliance options for a single process unit'' and replace it with a statement that a source ''cannot combine compliance options in paragraphs (a) [PBCO], (b) [add-on control systems compliance options] or (c) [emissions averaging provisions] for a single process unit.'' We feel that this wording change clarifies our intention to prevent sources from applying different control options to different portions of the emissions from a single process unit, while leaving open the potential for PCWP facilities to be able to include multiple compliance options for add-on control systems (*i.e.*, one option per defined operating condition) in a State permit. Although add-on controls are used in emissions averaging plans to achieve full or partial control of emissions from a given process unit, the emissions from a single process unit cannot be parceled such that a portion of the emissions meets one of the add-on control system compliance options and another portion is used as part of an EAP. The final rule continues to state that sources must meet at least one of the six options for add-on control systems.

2. PBCO Limits

Comment: Several commenters requested that PCWP facilities be allowed to use add-on control methods to achieve the PBCO limits. The commenters argued that allowing compliance with the PBCO using APCD is consistent with other MACT rules and P2 approaches. According to the commenters, numerous NESHAP allow emissions limits to be reached using add-on controls, P2 techniques, or a combination of both. The commenters stated that there was no legal or policy basis for imposing restrictions on the use of PBCO in the PCWP MACT. The commenters also stated that using add-on controls to comply with PBCO will benefit facilities that have process units that emit low levels of HAP. According to the commenter, some companies have already implemented P2 strategies that have been established as BACT in a prevention of significant deterioration (PSD) permit. Because these P2 strategies may fall short of the PBCO, companies implementing these strategies would be unable to achieve compliance with the proposed rule without abandoning the P2 strategy and installing full control. The commenters also stated that incorporating add-on controls in the PBCO would provide incentives to find low-energy pollution control equipment. The commenters gave an example whereby part of the emission unit exhaust could be used as combustion air for an onsite boiler. The commenters noted that in most cases, the boiler could only handle a portion of the exhaust from multiple dryer stacks. The commenters stated that by combining this type of partial control approach with low-temperature drying, a facility may be able to meet the applicable dryer PBCO limit. According to the commenters, in this case, allowing for partial control would exclude the need for RTO technology and would provide a net benefit to the environment with a reduction of collateral oxidizer emissions. The commenters gave another example in which a facility with a conveyor strand dryer could send the exhaust from the first dryer section to a burner and then send the heat back to the dryer; the emissions from the remaining dryer sections would be uncontrolled if the total emissions were below the PBCO limit. In a third example provided by the commenters, a facility would remove enough HAP to comply with the PBCO limit using a scrubber, which would require less energy than incineration.

Response: As in the proposed rule, the final rule does not allow sources to comply with the PBCO through the use of add-on control systems. Our intention for including the PBCO was to provide an alternative to add-on controls (*e.g.*, allow for and encourage the exploration of P2, which currently has not been demonstrated as achieved by PCWP sources) and not to create another compliance option for sources equipped with add-on control systems that could inadvertently allow add-on control equipped systems to not perform to expected control efficiencies. Sources equipped with add-on control systems already have six different compliance options from which to choose, in addition to the emissions averaging compliance option. We note that the six options for add-on control systems are based on emissions reductions achievable with MACT control devices and thus are a measure of the performance of MACT control devices. This might not be true if a source combined PBCO and add-on controls, as explained below.

At proposal, we established PBCO limits for 10 process unit groups. Initially, we felt that we needed total HAP data for at least one process unit in each process unit group that was equipped with a control system in order to establish the PBCO limits. However, we had to discard this approach because controlled total HAP data are not available for half (5 of 10) of the process unit groups. We developed a number of other approaches to establishing PBCO, and then compared the results of these approaches, where possible, with actual emissions in the outlet of MACT control devices. The approach that yielded results closest to actual emissions in the control device outlets was an approach based on a 90 percent reduction from the average emissions each process unit group. Thus, this approach was the one that resulted in limits that would most closely represent an alternative to the six compliance options for add-on control systems. However, our intention was not to develop an alternative limit to the six limits already established for add-on control devices. Our intention was to develop an alternative for P2 techniques. We decided to select an approach that allows sources that develop P2 techniques (or are otherwise inherently low-emitting sources) to comply and that reduces HAP emissions without generating the NO_X emissions associated with incineration-based controls. As a result, we selected a 90 percent reduction from the highest data point within each process unit group, because the results appeared to be at levels that would not preclude the development of environmentally beneficial P2 options as MACT.

If PBCO were allowed as another option for measuring the performance of add-on control devices, operators could run the APCD so that the APCD would not achieve MACT level emissions reductions, but would meet the PBCO. We note that we did not develop the methanol and formaldehyde add-on control options (options 4 and 6 in Table 1B to the final rule) based on typical or maximum levels of methanol and formaldehyde found in the outlet of the control devices, but instead looked at the performance of the MACT control devices in reducing these HAP, set the levels based on the method detection limits for these compounds, and

included a minimum inlet concentration requirement for the use of the outlet concentration options to ensure that HAP emissions reductions are achieved. Allowing the use of APCD to comply with PBCO could allow circumvention of such optimization, which could render the MACT control itself to be less effective than MACT.

Regarding the other MACT standards referenced by the commenters, we agree that these other rules may allow facilities more flexibility in meeting a production-based option (*e.g.*, ''lb/ton'' emission limit); however, we cannot allow add-on controls to be used to meet the PBCO in the final PCWP rule because doing so would render these limits not equivalent to the other compliance options. For example, consider a typical wood products press with an annual production rate of 100 million square feet of board per year and a total HAP emission rate of 1.0 pound per thousand square feet of board on a ¾-inch basis (lb/MSF ¾″). On an annual basis, the example press emits 50 tons of HAP per year. If the example press complies with the 90 percent HAP reduction requirement, then the HAP emissions reductions achieved will be at least 45 tons/yr. However, if this same press were allowed to comply with the applicable PBCO limit (0.30 lb/MSF ¾″) using an APCD (*e.g.*, RTO), then the emissions reductions achieved could be as little as 35 tons/yr if the APCD is only applied to a portion of the press' emissions or if the APCD is not operated at MACT-level efficiency. Not only would a significantly lower HAP emission reduction be achieved in this situation, but there also would not be any net benefit to the environment to justify the lower HAP reduction (*i.e.*, NO_X emissions would still be created). Therefore, we feel it is appropriate and in keeping with the MACT floor to require PCWP process units with uncontrolled HAP emissions above the PBCO thresholds to achieve the full 90 percent reduction in emissions. We also wish to clarify that a PCWP facility may use any number of compliance options, as long as these options are not combined for an individual process unit. For example, a facility may choose to meet the applicable PBCO limit for one dryer, control emissions from a blender to avoid controlling emissions on the remaining two dryers as part of an emissions average, and comply with one of the add-on control systems compliance options for the press.

Regarding the examples cited by the commenter as candidates for a PBCO if add-on controls were allowed, we note that the final rule includes a revised MACT floor for existing conveyor strand dryers, such that existing conveyor strand dryers that send the emissions from the first dryer section back to the combustion unit that heats the dryer should be able to meet the rule requirements without additional controls. In addition, partial control (*e.g.*, routing part of the emission stream from a process unit to an onsite combustion unit for incineration) is allowed as part of an EAP as long as the actual emissions reductions achieved are greater than or equal to the required emissions reductions. When partial control is used as part of an EAP, the overall reductions are equivalent to what would be achieved if a source elected to comply using the add-on control system compliance options; however, the same would not be true if partial control were used to comply with a PBCO limit. Therefore partial incineration control is not allowed in the PBCO.

Regarding the use of scrubbers to comply with a PBCO, as stated earlier in this preamble, the PCWP industry's own data do not support wet scrubbers as a reliable control technology for HAP, and sources equipped with wet control devices will be required to test prior to the wet control device if they elect to comply with a PBCO.

Comment: Several commenters stated that PCWP facilities should be allowed to neglect nondetect HAP measurements for PBCO calculations. The commenters argued that if a facility is forced to use values of one-half the detection limit for nondetect HAP, that facility may be unable to use PBCO because the mass of emissions attributed to undetected compounds may consume 50 percent or more of the PBCO limit. The commenters also noted that the detection levels measured in the field by the NCASI test method, NCASI IM/CAN/WP–99.01, generally range between 0.35 and 1 ppm, and the detection levels of the FTIR method averages about 1 ppm. According to the commenters, even at these low concentrations, using one-half the detection limit for nondetect compounds can put the PBCO out of reach for a high-flow-rate PCWP stream. The commenters also provided a sample calculation to demonstrate the effect that the detection level has on the compliance calculation.

Response: In responding to this request, we reviewed the information supplied by the commenters and analyzed the potential effects of making the requested change using available emissions data. After reviewing the total HAP data used to establish the PBCO limits, we decided that sources should be able to treat nondetect measurements for an individual HAP as zero for the sole purpose of determining compliance with the PBCO, if, and only if, the following two conditions are met: (1) The detection limit for that pollutant is set at a value that is less than or equal to 1 ppmvd, and (2) emissions of that pollutant are nondetect for all three test runs. We included the first condition to prevent test contractors from setting the detection limits too high, and thus generating false zeroes. We selected 1 ppmvd as the maximum detection limit value because it matches the detection limits achievable with the test methods included in the final PCWP rule. We included the second condition to ensure that the source is truly low-emitting, as evidenced by three nondetect test runs. If emissions of the HAP are detected during any one test run, then any nondetect runs must be treated as being equal to one-half the detection limit. The option to treat nondetect measurements as zero does not apply to the compliance options for add-on control systems because treating the outlet emissions from a control device as zero would artificially increase the calculated control efficiency for that pollutant to 100 percent.

To ensure that the PBCO limits were developed in a manner consistent with how they would be applied, the PBCO limits were recalculated using zero for nondetect measurements when all test runs were nondetect. As a result, the PBCO limit for reconstituted wood product board coolers changed from 0.015 to 0.014 lb/MSF ¾″. No other PBCO limits changed as a result of using zero for nondetects when calculating the PBCO limits.

We added a new PBCO limit to the final rule for secondary tube dryers. This new limit corresponds to our decision to treat primary and secondary tube dryers as separate process units, as discussed previously in this preamble. The final rule also differentiates between rotary strand dryers and conveyor strand dryers, as discussed previously in this preamble; however, no new PBCO limits have been added for these two process units groups. The final PBCO limit for rotary strand dryers is the same as the proposed limit for strand dryers because the data used to establish the proposed PBCO limit was based on data from rotary strand dryers exclusively. We do not have the necessary data to establish a PBCO for conveyor strand dryers, and thus the final rule does not include a PBCO limit for that process unit group.

3. Emissions Averaging Provisions

Comment: Industry commenters generally expressed support for the

inclusion of an emissions averaging program in the PCWP rule as proposed, but requested that the proposed provisions be modified to allow for broader use of emissions averaging at PCWP facilities. Requested modifications include allowing sources to receive credit for achieving emissions reductions greater than 90 percent; basing compliance on a single pollutant; allowing sources to combine emissions averaging with PBCO; and allowing sources to receive credit for P2 alternatives as part of an EAP.

Response: We included an emission averaging compliance option in the proposed rule as an equivalent, more flexible, and less costly alternative to the compliance options for add-on control systems. Unlike previous MACT standards with emissions averaging, the proposed (and final) emissions averaging provisions in the PCWP rule do not include (1) limits on the number of sources that can be included in an emissions average, (2) requirements for a hazard or risk analysis, or (3) application of a 10 percent discount factor to emissions credit calculations. In addition, the emissions averaging provisions in the final PCWP rule require that credits for emissions reductions be achieved using APCD, and that the EAP be based on emissions of the six predominant HAP emitted from PCWP process units, referred to as total HAP. Also, the emissions averaging provisions do not allow credit for reductions beyond 90 percent.

We disagree with the commenters' request to allow credit for achieving greater than 90 percent control of HAP as part of an EAP. We note that the 90 percent MACT floor level (upon which the emissions averaging provisions are based) reflects the inherent variability in uncontrolled emissions from PCWP process units and the decline in performance of control devices applied to these process units. The data set used to establish the MACT floor is composed of point-in-time test reports, some of which show a greater than 90 percent control efficiency; however, we selected 90 percent as the MACT floor level of control to reflect inherent performance variability. Therefore, it would be inappropriate to allow PCWP facilities to receive credit for similar point-in-time performance tests showing greater than 90 percent control, considering that the same types of control technologies would be used.

Regarding the commenters' request to allow credit for greater than 90 percent control for those sources with no MACT control requirements, we maintain that this would be inappropriate because the same issues of emissions variability and control device performance apply to those emission sources, and they likely would share control devices with PCWP process units that do have MACT control requirements.

We have rejected the commenters' suggestion to base the emissions averaging provisions on a single pollutant (*e.g.*, THC, methanol or formaldehyde), and retained the requirement in the final rule that the EAP must be based on total HAP. The predominant HAP emitted from a given process unit varies, with some process units emitting methanol as the predominant HAP and others emitting formaldehyde or acetaldehyde as the predominant HAP. However, the predominant HAP will always be one of the six we have identified in the definition of total HAP in the final PCWP rule. If we based the EAP on only one pollutant, process units that emit the target HAP in small quantities will not be correctly accounted for in the EAP, resulting in potentially less stringent control and greater potential risk than would result with other control options. As noted above, we did not include a hazard/risk study as part of the proposed EAP because we were requiring that the emissions reductions be based on total HAP, and PCWP process units generally emit the same six primary HAP, although in different quantities and ratios. Basing the EAP on a single pollutant would eliminate our rationale for not requiring a risk analysis. We also note that, while THC emissions are an acceptable surrogate for monitoring the performance of an add-on control device (same control device mechanisms that reduce THC emissions reduce HAP emissions), THC emissions are not an accurate surrogate for establishing baseline HAP emissions for uncontrolled process units, and thus the EAP should not be based solely on THC emissions. Although all PCWP process units emit THC, uncontrolled THC emissions from softwoods are substantially higher than from hardwoods due to non-HAP compounds (*e.g.*, pinenes) present in softwoods. Therefore, allowing sources without add-on controls to focus on THC reductions achieved by increasing hardwood usage might reduce THC emissions but would have a minimal impact on HAP emissions. For these reasons, we feel that, for the purpose of the final rulemaking, THC should only be used as a surrogate for HAP when assessing the performance of an add-on control device, and should not be used as a surrogate for establishing the required and actual mass removal of HAP as part of an EAP.

We disagree with the commenters that combining the emissions averaging option and PBCO will result in equivalent emissions reductions. As we stated in our response to previous comments in this section regarding PBCO, we developed the PBCO limits to provide an option for sources that develop P2 techniques. The PBCO limits represent applicability cutoffs such that sources with emissions below the applicable PBCO thresholds are not required to further reduce those emissions below MACT levels. By combining PBCO limits with the EAP, as proposed by the commenter, we would be allowing higher-emitting sources (*i.e.*, those that cannot meet a PBCO and which should be controlled) to escape controls by artificially lowering their emissions (using the credits from the EAP) to levels that would qualify as low-emitting (below PBCO limits). This is counter to the intent of the PBCO and would result in lower emissions reductions than would be achieved without combining these two compliance options; therefore, this does not represent an option that is equivalent to the MACT floor and is not allowed in the final rule.

We also disagree with the commenters' suggestion to modify the emissions averaging provisions to allow sources to receive credit for P2 projects because: (1) Compliance options (*i.e.*, PBCO) already exist for any P2 projects that prove feasible, and (2) inclusion of currently undemonstrated P2 projects within EAP would unnecessarily complicate these plans and hamper enforcement. As we noted previously in this preamble, the final rule allows PCWP facilities to use both P2 (*i.e.*, the PBCO) and emissions averaging at the same facility; sources are only limited in that they cannot apply both options to the same process unit. We also disagree with the commenters' assertion that quantifying the emissions reductions from P2 projects would not be difficult. Quantifying the emissions reductions associated with P2 projects has historically been a contentious issue, especially when a baseline emission level must be established from which to calculate the emissions reduction. We feel that the same issues apply for PCWP facilities, especially given the fact that P2 techniques have not been widely used or documented in the PCWP industry. In contrast, emissions reductions achieved through the use of add-on control systems are easily documented. The PBCO were established to address the future development and implementation of P2 techniques; however, the resultant

PBCO limits do not require that emissions reductions be determined. Instead, sources simply demonstrate that they are below the PBCO limit and will continue to operate in a manner that ensures they will remain below the PBCO limit.

Regarding the suggested P2 option of increasing a facility's use of hardwood species, in addressing other issues, commenters stressed the difficulties associated with maintaining a consistent wood material flow in terms of species, moisture content, etc., which would suggest that an operating condition based on maintaining a set level of wood species would be unworkable. Furthermore, for veneer dryers, where species identification (hardwood vs. softwood), and thus enforcement, is fairly straightforward from the standpoint of both visual inspection and end-product, we have already established separate MACT floors for softwood and hardwood veneer dryers (and require no further emissions reductions from hardwood veneer dryers). When the end product is particleboard or MDF, and the raw material is in the form of wood chips, planer shavings, or sawdust, determining how much of that material is softwood versus hardwood would be very difficult, and likely unenforceable. Because of commenters' concerns that an operating condition based on wood species is technically unworkable and the associated enforcement issues, we feel this option is not viable.

Regarding process changes such as reformulation, lowering dryer temperature, and routing process unit exhaust to existing combustion devices, the final rule already includes compliance options that would accommodate all of these strategies. For example, product reformulation and lowering dryer temperature are potential P2 options, and the PBCO limits would apply if the P2 efforts sufficiently lower emissions. The final PCWP rule distinguishes between green (high temperature, high moisture) rotary dryers and dry (low temperature, low moisture) rotary dryers and requires no further emissions reductions from dry rotary dryers. Regarding the use of existing combustion units as control devices, the final rule allows sources to route emissions to onsite combustion units for incineration. The final rule also allows sources to control a portion of a process unit's emission stream as part of an emissions average. However, we disagree that incineration of emissions in onsite process units is a P2 measure. Therefore, compliance with the PBCO using process incineration is not allowed in the final rule. The add-on control system and emissions averaging compliance options are available for process units controlled by routing exhaust to an onsite combustion unit.

The final PCWP rule does not allow production curtailment to be counted as part of an EAP. As stated in the preamble to the proposed rule (68 FR 1276, January 9, 2003), we do not have facility-wide uncontrolled emissions data and facility-wide controlled emissions data for each PCWP facility to determine the baseline emissions and percent reduction in HAP achieved by each facility. Therefore, the MACT floor is not based on facility-wide emissions and emissions reductions achieved during year ''x.'' Instead, the MACT floor is based on (1) the presence or absence of certain MACT controls (in place as of April 2000) on certain types of process units and (2) test data showing that these controls reduce emissions by greater than or equal to 90 percent. We applied the MACT floor methodology at the process unit level because we had the most accurate data at the process-unit level, making this approach the most technically and legally sound. The PCWP industry is very dynamic, with frequent shutdowns of equipment for maintenance, and occasionally longer shutdowns (*e.g.*, month-long), if demand drops. The final PCWP rule requires emissions from specified process units at impacted PCWP facilities to be reduced by 90 percent, regardless of what the levels of emissions are for those facilities in a particular year. Therefore, implementation of the final PCWP rule at individual PCWP facilities will result in greater emissions reductions in years of greater production and lesser emissions reductions during years of lower production. As mentioned in the response to the previous comment, the emissions averaging provisions must achieve emissions reductions that are greater than or equal to those that would be achieved using the add-on control system compliance options, which specify which process units must be controlled. If we allowed credit for production curtailments, the overall emissions reductions achieved through the emissions averaging provisions would not be equivalent to what would be achieved through the use of the add-on control system compliance options, and therefore, the EAP would not be a MACT-equivalent alternative. For example, if we allowed production curtailments to count toward an emissions average, then a facility that shuts down one of two parallel production lines (each of which includes dryers and a press, plus HAP-emitting equipment that does not have associated control requirements) may not be required to control the emissions from any of the dryers or press on the remaining production line. However, if the same facility opted to comply with the add-on control system compliance options, then it would be required to control the press and dryer emissions from the remaining production line by 90 percent regardless of whether or not the other production line was shut down. In order to maintain equivalency between the emissions averaging provisions and the add-on control system compliance options and to preserve the required HAP emissions reductions, the final PCWP rule does not allow production curtailment to be counted as part of an EAP.

Comment: One commenter objected to the inclusion of the emissions averaging option in the rule primarily because of the lack of a requirement to conduct a hazard or risk study. This commenter asserted that removing a certain mass of HAP regardless of identity is not equivalent to the other compliance options, and when the dose-response and exposure data are examined, it should be obvious that trading one HAP for another to meet a RMR is not an acceptable option. The commenter noted that there are currently no methods for weighting the toxicity of HAP and that the effects of simultaneous exposure to several HAP also are unknown.

Response: We disagree with commenter's assertion that inclusion of the emissions averaging provisions will potentially increase toxic emissions at certain PCWP process units. As stated in the preamble to the proposed rule (68 FR 1289, January 9, 2003), PCWP facilities have fewer pollutants of concern (as compared to HON facilities) and are likely to have similar HAP emissions from the emission points (process units) that would be used to generate debits and credits. The PCWP facilities emit six primary HAP, whereas HON facilities may emit over 140 different HAP. The PCWP facilities choosing to comply through emission averaging must account for the emissions of the six primary HAP (total HAP), which represent greater than 96 percent of the mass of HAP emitted from PCWP process units. Because the MACT control technologies are effective in reducing the emissions of all six of these HAP, and the emissions averaging provisions require the use of add-on control technologies for credit-generating sources in an EAP, we feel that the emissions averaging provisions will achieve a hazard/risk benefit

comparable to what would be achieved through point-by-point compliance. Although the final rule does not require a hazard/risk study, States will still have the discretion to require a PCWP facility that requested approval of an EAP to conduct a hazard/risk study (or could preclude the facility from using emissions averaging altogether).

Comment: Several commenters requested that we write the definitions of some of the variables used in the emissions averaging equations in the final rule to clarify that sources can take credit for emission reductions achieved through partial control of debit-generating process units.

Response: We agree with the commenters' request and have written the definitions of some of the variables used in the emissions averaging equations in today's final rule to clarify that partial credits generated from debit-generating process units that are undercontrolled can be included in the calculation of the AMR. For example, a PCWP facility may decide to control 30 percent of the emissions from a green rotary dryer and 80 percent of the emissions from a blender as part of an EAP in order to achieve a HAP reduction that is the same as or greater than what the facility would have achieved by controlling the green dryer emissions alone by 90 percent. In this example, the green rotary dryer is a debit-generating unit because it has MACT control requirements; however, the green dryer can receive credit in the AMR calculation for any partial emissions reductions that are achieved.

H. Testing and Monitoring Requirements

1. Test Methods

Comment: Several commenters noted that one of the NCASI test methods, NCASI IM/CAN/WP–99.01, has been updated, and requested that the final rule refer to the revised version. One of the commenters provided a revised version of the method, identified as NCASI IM/CAN/WP–99.02. This commenter noted that the trained NCASI sampling team was able to get good consistent results with the original version of the method both in the laboratory and in the field, but that sampling contractors had difficulty obtaining valid results. The commenter maintained that the revised version is easier to understand, includes more details, and reflects the comments of the contractors that have experience with the original method. The commenter also stated that the quality assurance requirements were strengthened in the revised version to ensure good results. Several commenters also noted that NCASI is currently developing a new method for measuring the six HAP (total HAP) listed in the PCWP rule as proposed. Therefore, the commenters requested that we include language in the final rule that would allow PCWP facilities to use future methods once they have been reviewed by EPA and have passed Method 301 validation at a PCWP plant.

Response: We reviewed the revised NCASI method IM/CAN/WP–99.02 supplied by the commenter and agree that the revised method is appropriate for measurement of the six HAP that comprise ''total HAP;'' therefore, we have included NCASI IM/CAN/WP–99.02 in the today's final rule. Regarding the development of future test methods, if and when a new method for measuring HAP from PCWP sources is developed and validated via EPA Method 301, we will issue an amendment to the final rule to include the use of that method as an alternative to the methods included in the final rule for measuring total HAP (*i.e.*, NCASI Method IM/CAN/WP/99.02 and EPA Method 320—Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR). In the meantime, if the new method is validated using Method 301, then the Method 301 results can be used to request approval to use the new method on a site-specific basis.

Comment: Several commenters noted that the tracer gas method for determining capture efficiency, developed by a PCWP company and included in the proposed rule (68 FR 1276, appendix A to 40 CFR part 63), is a work in progress. These commenters included with their comments a copy of field validation tests conducted at a PCWP facility. The commenters noted that future tests are planned using the tracer gas method and that the results of these tests should help EPA improve the use and application of the proposed tracer gas test.

Response: We have reviewed the results of the first field validation test of the tracer gas method and note that the commenters did not provide any specific recommendations for modifying the tracer gas method as it was proposed. Therefore, other than a few minor wording changes, we did not make any substantive changes to the tracer gas method in the final rule. If the results of subsequent field tests demonstrate a need to (further) modify the tracer gas method, we will issue an amendment to the final rule to incorporate the necessary changes.

2. Sampling Locations

Comment: Several commenters recommended that the final rule be reworded to clearly state that inlet sampling should take place at the functional inlet of a control device sequence or at the primary HAP control device inlet. For example, the commenters noted that the final rule needs to clarify that sampling should take place at the inlet of a WESP that precedes an RTO instead of between the two devices. The commenters noted that many WESP–RTO control systems are too closely coupled to allow for a sampling location in between that meets the requirements of Method 1 or 1A, 40 CFR 60, appendix A.

Response: We agree with the commenters and have written the final PCWP rule to indicate that, for HAP-altering controls in sequence, such as a wet control device followed by a thermal oxidizer, sampling sites must be located at the functional inlet of the control sequence (*e.g.*, prior to the wet control device) and at the outlet of the control sequence (*e.g.*, thermal oxidizer outlet) and prior to any releases to the atmosphere. In addition, as discussed previously in this preamble, the final rule also clarifies that facilities demonstrating compliance with a PBCO limit for a process unit equipped with a wet control device must locate the sampling site prior to the wet control device.

3. Testing Under Representative Operating Conditions

Comment: Several commenters objected to the proposed requirement to test process units under representative operating conditions. The commenters argued that, because the initial compliance tests determine the outer limits of compliance, those tests should be conducted at the boundaries of expected performance for the process and control units. These commenters noted that testing at representative conditions would not accurately simulate true operating conditions, and thus, the operating parameter limits would be too narrow. Therefore, the commenters contended that the final rule should specify that initial compliance tests should be conducted at the extremes of the expected operating range for the parameter and control device function. In addition, one of the commenters noted that the testing provisions should also address potential conflicts with traditional State requirements to test at maximum or design conditions.

Response: The proposed rule defined representative operating conditions as

those conditions under which ''the process unit will typically be operating in the future, including use of a representative range of materials[* * *] and representative temperature ranges.'' We disagree that the proposed requirement to test under representative operating conditions will conflict with State requirements and result in operating parameter limits/ranges that are too narrow. We wish to clarify that the definition of representative operating conditions refers to the full range of conditions at which the process unit will be operating in the future. We expect that facilities will test under a variety of conditions, including upper and/or lower bounds, to better define the minimum or maximum operating parameter limit or broaden their operating limit ranges (where applicable). For example, if a facility generally operates a process unit (equipped with an RTO) under conditions that require the RTO to be operated at a minimum temperature of 1450°F to ensure compliance with the standards, but at other times operates that process unit under conditions such that the minimum RTO operating temperature must be 1525°F to ensure compliance, then the facility has two options. One option is for the facility to incorporate both of these operating conditions into their permit such that they are subject to two different operating parameter limits (minimum temperatures), one for each (defined) operating condition. As an alternative, the facility could decide to comply with the parameter limit associated with the worst-case operating conditions (most challenging conditions for the RTO), which in this example would correspond to maintaining a minimum RTO operating temperature of 1525°F, and thus, they could demonstrate continuous compliance regardless of the operating condition as long as they maintained the RTO temperature at or above 1525°F. We have revised the monitoring requirements for process units without control devices to allow these sources to establish a range of compliant parameter values. In addition, those PCWP facilities operating biofilters must maintain their biofilter bed temperature within the range established during the initial performance test and, if available, previous performance tests. If the final PCWP rule required testing at maximum operating conditions, there would be no way for facilities to identify their operating parameter ranges. For these reasons, we maintain that the requirement to test at representative operating conditions is appropriate for the PCWP rule.

4. Process Incineration Monitoring Requirements

Comment: Several commenters expressed approval for the proposed exemption from testing and monitoring requirements for those process units with emissions introduced into the flame zone of an onsite combustion unit with a capacity greater than or equal to 44 megawatts (MW) (150 million Btu/hr). In addition, several of these commenters requested that we expand upon this exemption in the final rule. First, the commenters requested that we extend the exemption to include situations where the process unit exhaust is introduced into the combustion unit with the combustion air. The commenters noted that we had included such exemptions in the HON (40 CFR part 63, subpart G) and in the Pulp and Paper Cluster Rule (40 CFR part 63, subpart S) in recognition of the fact that boilers greater than 44 MW typically had greater than ¾-second residence time, ran hotter than 1,500°F, and usually had destruction efficiencies greater than 98 percent (see 65 FR 3909, January 25, 2000, and 65 FR 80762, December 22, 2000, at § 63.443(d)(4)(ii)). The commenters stated that the design and construction of PCWP boilers follow the same principles that would allow for these operating conditions. Second, the commenters requested that we also exempt smaller combustion units (less than 44 MW, or 150 million Btu/hr) from the testing and monitoring requirements if the process unit exhaust is introduced into the flame zone of the combustion unit. The commenters noted that most of the combustion units associated at PCWP facilities are smaller units and that testing of these units can be complicated by their configuration and integration with other process units.

Response: After reviewing available information on process incineration at PCWP facilities, we decided to include smaller combustion units in the exemption from testing and monitoring requirements if the process exhaust enters into the flame zone. As part of this change, we have included definitions of ''flame zone'' and ''combustion unit'' in the final rule. However, we decided not to include an exemption for PCWP combustion units that introduce the process exhaust with the combustion air. As noted by the commenters, the HON and the final pulp and paper MACT I rule exempt from testing and monitoring requirements combustion devices with heat input capacity greater than or equal to 44 MW. The HON also exempts from testing and monitoring combustion devices with capacity less than 44 MW if the exhaust gas to be controlled enters with the primary fuel. If the exhaust gas to be controlled does not enter with the primary fuel, then testing and continuous monitoring of firebox temperature is required by the HON. Similarly, the final pulp and paper MACT I rule exempts from testing and monitoring requirements combustion devices (including recovery furnaces, lime kilns, boilers, or process heaters) with capacity less than 44 MW if the exhaust stream to be controlled enters into the flame zone or with the primary fuel. Similar to the HON and pulp and paper MACT I rules, the final PCWP rule extends the exemption from testing and monitoring requirements to combustion units with heat input capacity less than 44 MW, provided that the exhaust gas to be treated enters into the combustion unit flame zone. If the exhaust gas enters into the combustion unit flame zone, the required 90 percent control efficiency may be assumed. If the exhaust gas does not enter into the flame zone, then the testing and monitoring requirements for thermal oxidizers will apply.

As noted by the commenter, the HON and the final pulp and paper MACT I rule exempted boilers (and recovery furnaces at pulp and paper mills) with heat input capacity greater than 44 MW from testing and monitoring requirements because performance data showed that these large boilers achieve at least 98 percent combustion of HAP when the emission streams are introduced with the primary fuel, into the flame zone, or with the combustion air. Lime kilns at pulp and paper mills were excluded from this provision because we did not have any data to show that lime kilns can achieve the required destruction efficiency when the HAP emission stream is introduced with the combustion air. Therefore, lime kilns at pulp and paper mills that accept HAP emission streams must introduce the stream into the flame zone or with the primary fuel. We do not have the data to show that the design and construction of large (greater than 44 MW) combustion units at PCWP plants would be similar to boilers found at pulp and paper mills. Furthermore, combustion units at PCWP plants with heat input capacity of greater than 44 MW are less prevalent than smaller (*i.e.*, less than 44 MW) PCWP combustion units, and many of these smaller combustion units are not boilers. As stated above, the final rule exempts these smaller combustion units from the testing and monitoring requirements

provided that the HAP emission stream is introduced into the flame zone. For these reasons, the final PCWP rule does not extend the exemption from testing and monitoring to those boilers greater than 44 MW that introduce the HAP emission stream with the combustion air.

5. Selection of Operating Parameter Limits for Add-On Control Systems

Comment: Several commenters stated that the inlet static pressure to a thermal or catalytic oxidizer is not a reliable indicator of the flow through the oxidizer, the destruction efficiency, or the capture efficiency. The commenters also noted that the preamble to the PCWP rule stated that monitoring the static pressure can indicate to the operator when there is a problem such as plugging. However, the commenters stated that static pressure is usually the last indicator of these types of control device problems. As discussed in the promulgation BID, the commenters agreed that measuring those parameters helps to assess the overall condition of the oxidizer but provided reasons why setting limits on these parameters is inappropriate. The commenters further noted that monitoring the static pressure helps to control the speed of the fan or the oxidizer dampers so that all the air flows are balanced. According to the commenters, static pressure is adjusted to avoid vacuum conditions in the ductwork of multiple-dryer systems treated by one control device when one dryer is shut down, to improve emission collection efficiency and prevent fugitive emissions, and to adjust the pressure drop across a bag filter as it fills with particulates, among other reasons. However, the commenters stated that, if operators are required to keep the static pressure within an operating range, it will limit their ability to maintain capture efficiency. The commenters expressed similar concerns regarding air flow rate monitoring and noted that numerous factors affect the air flow through the control device, including the rate of water removal in dryers, leakage of tramp air into the process, the number of processes operating for control units that receive emissions from multiple production units, and the overall production speed due to process adjustments. The commenters noted that, in those cases where air flow to the oxidizer is not constant, monitoring the air flow through the oxidizer will not be an accurate measure of capture efficiency.

Response: After reviewing the information provided by the commenters, we agree that, while monitoring the static pressure or air flow rate helps to assess the overall condition of the oxidizer and provides an indication that emissions are being captured, setting operating limits on these parameters is not appropriate for the reasons given by the commenters. Therefore, today's final rule does not include the proposed requirement to monitor the static pressure or air flow rate for thermal and catalytic oxidizers.

Comment: Several commenters requested that we modify the procedures for determining the minimum operating temperature (operating limit) for thermal and catalytic oxidizers. The commenters stated that, due to the normal variation in combustion temperatures, a facility will have to perform the initial compliance test at lower-than-normal temperature conditions to ensure that the minimum combustion temperature will be set at a level that they can continuously meet. The commenters requested that we allow facilities to operate the thermal oxidizers up to 50°F lower than the average obtained by the performance test and allow facilities to operate RCO at a level that is 100°F above the minimum operating temperature of the catalyst. The commenters also noted that, when the THC concentration in the inlet is high, the RCO will not need any additional heat and it can operate at temperatures higher than the set point. Therefore, if the initial compliance tests are conducted under these conditions, the operating temperature limit will be too high for production rates at less than full capacity.

Commenters also stated that, for RCO, the thermocouple should be placed in a location to measure the temperature of the gas in the combustion chamber between the catalyst beds instead of in a location to measure the gas stream before it reaches the catalyst bed. The commenters noted that, because the gas flow reverses direction in RCO, the inlet temperature monitor will not consistently measure the gas at the same point in the process such that sometimes the gas temperature will be recorded after the catalyst beds instead of before. The commenters further noted that placement of the monitor inside the combustion chamber would eliminate the need for multiple monitors and avoid problems such as overheating and burnout of the catalyst media caused by the temperature delay between the burner and the RCO inlet.

Response: We disagree with the commenters' request to include a 50°F margin around the minimum operating temperature established during the thermal oxidizer compliance test. In general, selection of the representative operating conditions for both the process and the control device for conducting the performance test is an important, and sometimes complex, task. We maintain that establishing the add-on control device operating limit at the level demonstrated during the performance test is appropriate. We note that the PCWP rule as proposed allows a facility to select the temperature operating limits based on site-specific operating conditions, and the facility is able to consider the need for temperature fluctuations in this selection. The PCWP rule as proposed requires that the operating limit be based on the average of the three minimum temperatures measured during a 3-hour performance test (rather than on the average temperature over the 3-hour period, for example) to accommodate normal variation during operation and ensure that the minimum temperature established represents the lowest of the temperatures measured during the compliant test. For example, during a 3-hour, three-run performance test, the operating limit would be determined by averaging together the lowest 15-minute average temperature measured during each of the three runs. However, continuous compliance with the operating limit is based on a 3-hour block average. For a typical 3-hour set of data, this means that the 3-hour block average will be higher than the average of the three lowest 15-minute averages, so the temperature monitoring provisions already have a built-in compliance margin. In addition, the final rule allows PCWP facilities to conduct multiple performance tests to set the minimum operating temperature for RCO and RTO, so PCWP sources would have the option to conduct their own studies (under a variety of representative operating conditions) in order to establish the minimum operating temperature at a level that they could maintain and that would provide them with an acceptable compliance margin. We feel these provisions allow sufficient flexibility, and an additional tolerance for a 50°F temperature variation is not necessary. Therefore, the final rule does not allow facilities to operate thermal oxidizers 50°F lower than the average temperature during testing.

With regard to RCO, we agree with the commenters that when the THC concentration in the inlet is high, the RCO will not need any additional heat and it can operate at temperatures higher than the set point. Therefore, if the initial compliance tests are conducted under these conditions, the operating temperature limit will be too

high for production rates at less than full capacity. However, the final rule requires emissions testing under representative operating conditions and not maximum operating conditions. In addition, we do not agree with the commenter's solution to set the operating limit at 100°F above the minimum operating (design) temperature of the catalyst. As with RTO, we feel it is incumbent upon the facility to demonstrate performance and establish the operating limits during the compliance demonstration test. Therefore, the final rule requires the facility to establish the minimum catalytic oxidizer operating temperature during the compliance test. However, as noted below, we have provided more flexibility to the facility regarding temperature monitoring for RTO and RCO.

We recognize that in a typical RTO and RCO the combustion chamber contains multiple burners, and that each of these burners may have multiple thermocouples for measuring the temperature associated with that burner. The final rule requires establishing and monitoring a minimum firebox temperature for RTO. In an RTO, the minimum firebox temperature is actually represented by multiple temperature measurements for multiple burners within the combustion chamber. Thus, the final rule clarifies that facilities operating RTO may monitor the temperature in multiple locations within the combustion chamber and calculate the average of the temperature measurements to use in establishing the minimum firebox temperature operating limit.

Regarding RCO, we agree with the commenters that, because the gas flow reverses direction in RCO, the inlet temperature monitor will not consistently measure the gas at the same point in the process, such that sometimes the gas temperature will be recorded after the catalyst beds instead of at the inlet to the beds. We did not intend to require the separate measurement of each inlet temperature by switching the data recording back and forth to coincide with the flow direction into the bed. The intention is to monitor the minimum temperature of the gas entering the catalyst to ensure that the minimum temperature is maintained at the operating level during which compliance was demonstrated. This can be accomplished by measuring the temperature in the regenerative canisters at one or more locations. Measuring the inlet temperatures of each catalyst bed and then determining the average temperature for all catalyst beds is one approach. Even though some of the beds are cooling and others are heating, the average across all of the catalyst beds should not vary significantly. Another acceptable alternative is monitoring the combustion chamber temperature, as suggested by the commenters. The monitoring location(s) selected by the facility may depend on the operating conditions (*i.e.*, THC loading to the unit) during the performance test and how the unit is expected to be operated in the future. The objective is to establish monitoring and operating limits that are representative of the conditions during the compliance demonstration test(s) and representative of the temperature to which the catalyst is exposed. We recognize the need for flexibility in selecting the temperature(s) to be monitored as operating limits for RCO. Therefore, the final rule provides flexibility by allowing facilities with RCO to choose between basing their minimum RCO temperature limit on the average of the inlet temperatures for all catalyst beds or the average temperature within the combustion chamber. If there are multiple thermocouples at the inlet to each catalyst bed, then we would expect facilities to average the measurements from each thermocouple to provide a representative catalyst bed inlet temperature for each individual catalyst bed.

Finally, the final rule also includes an option (in lieu of monitoring oxidizer temperature) for monitoring and maintaining the oxidizer outlet THC concentration at or below the operating limit established during the performance test. Use of the THC monitoring option would eliminate the concerns regarding establishing and monitoring oxidizer operating temperatures (in effect, it provides facilities complete flexibility in operation of the control device, as long as the THC outlet concentration remains below the operating limit).

Comment: One commenter recommended that we require sampling and testing of the catalyst activity level for RCO. The commenter stated that the proposed requirement to monitor inlet pressure may not be sufficient to detect catalyst problems such as poisoning, blinding, or degradation.

Response: We agree with the commenter that a catalyst activity level check is needed because catalyst beds can become poisoned and rendered ineffective. An activity level check can consist of passing an organic compound of known concentration through a sample of the catalyst, measuring the percentage reduction of the compound across the catalyst sample, and comparing that percentage reduction to the percentage reduction for a fresh sample of the same type of catalyst. Generally, the PCWP facility would remove a representative sample of the catalyst from the catalytic oxidizer bed and then ship the sample to a testing company for analysis of its ability to oxidize organic compounds (*e.g.*, by a flame ionization detector).

In response to this comment, we added to the final rule a requirement for facilities with catalytic oxidizers to perform an annual catalyst activity check on a representative sample of the catalyst and to take any necessary corrective action to ensure that the catalyst is performing within its design range. Corrective actions may include washing or baking out the catalytic media, conducting an emissions test to ensure the catalytic media is resulting in the desired emissions reductions, or partial or full media replacement. Catalysts are designed to have an activity range over which they will reduce emissions to the desired levels. Therefore, the final rule specifies that corrective action is needed only when the catalyst activity is outside of this range. It is not our intention for facilities to replace catalyst if the catalytic media is not performing at the maximum level it achieved when the catalyst was new. Also, the final rule specifies that the catalyst activity check must be done on a representative sample of the catalyst to ensure that facilities that may have recently conducted a partial media replacement do not sample only the fresh catalytic media for the catalyst activity check.

Comment: Several commenters stated that the proposed operating requirements for pressure drop across the biofilter bed should be removed from the final PCWP rule. The commenters contended that pressure drop is a good parameter to monitor voluntarily because it indicates the permeability and age of the biofilter bed, helping to determine maintenance and replacement needs; however, it is not an indicator of destruction efficiency. The commenters noted that, because of normal wear and tear, the pressure drop gradually increases over the 2- to 5-year life span of the biofilter, so it would not be possible to maintain a constant operating pressure. The commenters further noted that the supporting materials in the project docket did not provide any information or data that would support the idea that pressure drop is an indication of HAP destruction efficiency, but only indicated that pressure drop was an indication of the age of the biofilter. For these reasons, the commenters argued

that setting an absolute limit on pressure drop was inappropriate.

The commenters also requested that the proposed requirements to monitor the pH of the biofilter bed effluent be removed from the final PCWP rule. The commenters noted that pH is a good parameter to monitor voluntarily because it indicates the environmental conditions inside the biofilter bed and can indicate the presence of organic acids and THC decomposition products, but it is not a reliable indicator of destruction efficiency. According to the commenters, small fluctuations of pH are expected and have little effect on the biofilter performance; therefore, the narrow range of pH values that would be established as an operating range by the initial compliance tests should not be used alone to determine biofilter performance. The commenters also noted some problems associated with continuous measurement of pH. According to the commenters, some biofilter units operate with periodic irrigation of the bed, such that the effluent flow is not constant and continuous monitoring is not possible. The commenters also pointed to an NCASI survey that confirmed that continuous pH monitoring would be impractical for the facilities surveyed. The commenters stated that, because none of the PCWP facilities surveyed could find a link between pH alone and biofilter performance, none of those facilities currently have continuous pH monitors on their biofilters.

In addition, several commenters requested changes to the proposed requirement to monitor the inlet temperature of the biofilter. These commenters agreed that temperature is a parameter that should be monitored for biofilters, but argued that the location of the temperature monitor should be changed from the biofilter inlet to the biofilter bed or biofilter outlet. The commenters noted that the biofilter bed temperature has the greatest impact on biological activity. According to the commenters, the biofilter inlet temperature is not a good indicator of bed temperature and can change very rapidly depending upon the operating rate of the press, the humidity, and the ambient temperature.

Response: We agree with the commenters that increases in pressure drop will occur over time and will not necessarily equate to a reduction in control efficiency, making an absolute limit on pressure drop ineffective in demonstrating continuous compliance. Therefore, we have not included the requirement to monitor pressure drop in the operating requirements for biofilters in the final PCWP rule. We have also removed the requirement to monitor pH from the final rule. Although pH is an indicator of the health of the microbial population inside the biofilter, we agree with the commenters that including continuous pH monitoring as an operating requirement for biofilters may not be appropriate.

We also agree with the commenters that the biofilter bed temperature has the greatest impact on biological activity and that the location for monitoring the biofilter temperature should be changed. We did not propose monitoring of biofilter bed temperature because we thought that monitoring of biofilter inlet temperature would be simpler because only one thermocouple would be required. The temperature inside the biofilter bed can change in different areas of the bed, and therefore, depending on the biofilter, multiple thermocouples may be necessary to get an accurate picture of the temperature conditions inside the biofilter bed. Prior to proposal we rejected the idea of monitoring the biofilter exhaust temperature because temperature measured at this location can be affected by ambient temperature (especially for biofilters with short stacks) more than the temperature inside the biofilter bed. We now conclude that there is no better, more representative way to monitor the temperature to which the biofilter microbial population is exposed than to directly monitor the temperature of the biofilter bed. According to our MACT survey data, most facilities with biofilters are already monitoring biofilter bed temperature. Therefore, the final rule requires continuous monitoring of the temperature inside the biofilter bed.

The proposed rule would have allowed facilities to specify their own monitoring methods, monitoring frequencies, and averaging times for the proposed biofilter operating parameters (*i.e.*, inlet temperature, effluent pH, and pressure drop). However, monitoring of temperature is not as subjective as monitoring biofilter effluent pH and pressure drop; therefore, as an outgrowth of our decision to not require monitoring of biofilter effluent pH and pressure drop, the final rule specifies the monitoring method, frequency, and averaging time for biofilter bed temperature monitoring. The final rule requires that each thermocouple be placed in a representative location and clarifies that multiple thermocouples may be used in different locations within the biofilter bed. The temperature data (*i.e.*, average temperature across all the thermocouples located in the biofilter bed if multiple thermocouples are used) must be monitored continuously and reduced to a 24-hour block average. A 24-hour block average was selected for biofilter temperature monitoring because we recognize that there may be some diurnal variation in temperature. Facilities wishing to reflect a diurnal temperature variation when establishing their biofilter temperature may wish to perform some test runs during peak daily temperatures and other test runs early in the morning, when temperatures are at their lowest.

Facilities may choose to observe parameters other than biofilter bed temperature, but will not be required to record or control them for the final PCWP rule. We feel that many factors can affect biofilter performance, either alone (*e.g.*, a media change) or in concert with one another (*e.g.*, a loss of water flow results in a sharp change in temperature and pH). The factors that have the greatest effect on biofilter performance are likely to be site-specific. However, based on the comments we have received, we conclude that extensive biofilter parameter monitoring is not the best method for ensuring continuous compliance. To promote enforceability of the final PCWP rule, we have added a requirement to perform periodic testing of biofilters. The final rule requires facilities to conduct a repeat test at least every 2 years and within 180 days after a portion of the biofilter bed is replaced with a new type of media or more than 50 percent (by volume) of the biofilter media is replaced with the same type of media. Each repeat test must be conducted within 2 years of the previous test (*e.g.*, 2 years after the initial compliance test, or 2 years after the test following a media change). We are requiring repeat testing after a partial or wholesale change to another media type (considered a modification of the biofilter) because such a modification can impact the performance of the biofilter. Facilities that replace biofilter media with a new type of media (*e.g.,* bark versus synthetic media) must also re-establish the limits of the biofilter bed temperature range. We feel that substantial replacement of the biofilter media (*e.g.*, replacement of more than 50 percent of the media) with the same type of media may affect short-term performance of the biofilter while the replacement media becomes acclimated, and therefore, the final rule requires a repeat performance test following this type of media replacement. However, PCWP facilities that replace biofilter media with the same type of media are not required to re-establish the biofilter

bed temperature range. In the case of same-media replacements, we feel it is appropriate for PCWP facilities to be able to use data from previous performance tests to establish the limits of the temperature range. During repeat testing following replacement with the same type of media, facilities can verify that the biofilter remains within the temperature range established previously or establish a new compliant temperature range. Facilities using a THC CEMS that choose to comply with the THC compliance options (*i.e.*, 90 percent reduction in THC or outlet THC concentration less than or equal to 20 ppmvd) may use the data from their CEMS in lieu of conducting repeat performance testing.

Comment: Several commenters requested that the final rule allow new biofilters a longer period than 180 days to establish operating parameter levels. These commenters suggested a 1-year period, because that would be long enough to observe the full seasonal variation in parameters and find the true operating maxima and minima.

Response: We disagree that more than 180 days is necessary to establish operating parameter limits for biofilters. As mentioned previously, we have eliminated the proposed requirement to establish operating limits for pH and pressure drop. Today's final rule contains two options for biofilter operating parameter limits: biofilter bed temperature range and outlet THC concentration. While allowing 1 year to establish the biofilter bed temperature operating range is reasonable due to seasonal temperature variations, 1 year is not necessary for establishing an outlet THC concentration limit. Furthermore, the final rule already allows facilities to expand their operating ranges (see § 63.2262(m)(3)) through additional emissions testing.

The compliance date for existing facilities is 3 years after promulgation of the final PCWP rule, and existing facilities are allowed 180 days following the compliance date to conduct performance testing and establish the operating parameter limits. If there is concern that 180 days is not long enough for a new biofilter installation to operate under the full range of biofilter bed temperatures, then existing facilities should begin operation of their biofilter well before the compliance date (*e.g.*, 180 days prior to the compliance date if 1 year is needed). Facilities also have the option of testing their biofilter prior to the compliance date to establish one extreme of their biofilter bed temperature range. The compliance date for new PCWP facilities is the effective date of the rule (if startup is before the effective date) or upon initial startup (if the initial startup is after the effective date of the rule), and biofilters installed at new PCWP facilities would have up to 180 days following the compliance date to establish the operating parameter limits. To address situations where a new biofilter is installed at an existing facility more than 180 days after the compliance date (*e.g.*, to replace an existing RTO), we have included section § 63.2262(m)(2) to the final PCWP rule, which allows existing sources that install new biofilters up to 180 days following the initial startup date of the biofilter to establish the operating parameter limits. Thus, new biofilter installations are given time for establishment of operating parameter limits regardless of where they are installed at new or existing sources.

Comment: Multiple commenters supported the option to continuously monitor THC at control device outlets to demonstrate compliance, but suggested that either the procedure for determining the operating limits or the length of the averaging periods be altered. The commenters stated that THC concentration at a control device outlet is not a parameter that can be easily adjusted by operators over short periods of time. The commenters stated that 3 hours is not a long enough block to avoid deviations from compliance given the variability of the process. The commenters provided an analysis of THC data from a biofilter outlet that showed multiple deviations occurring over a two month period when a 3-hour block average was used and few to zero deviations when a 24-hour or 7-day block average was used for the operating limits. The commenters stated that because HAP destruction efficiency of biofilters does not vary much with time, the longer block average would not be environmentally harmful.

Response: While THC emissions at the outlet of a biofilter may vary, the THC emissions at the outlet of a thermal or catalytic oxidizer should not vary greatly. Although, as stated by the commenters, the HAP destruction efficiency of biofilters is not subject to large short-term variations, the same is not true for thermal and catalytic oxidizers (*e.g.*, a sudden significant decrease in temperature could result in a sudden decrease in HAP reduction). Therefore, we feel it is appropriate to maintain the 3-hour block averaging requirement for THC monitoring for thermal and catalytic oxidizers. However, we have expanded the THC averaging requirement for biofilters to a 24-hour block average to provide more flexibility. The THC operating limit for biofilters would be established as the maximum of three 15-minute recorded readings during emissions testing. We also note the continuous monitoring of THC is not required for all APCD, but is an alternative to continuous monitoring of temperature. Furthermore, facilities can conduct multiple performance tests at different operating conditions to increase their maximum THC concentration operating limit.

6. Selection of Monitoring Requirements for Uncontrolled Process Units

Comment: Several commenters recommended that we change the title of proposed § 63.2262(n) (How do I conduct performance tests and establish operating requirements?—Establishing uncontrolled process unit operating requirements) to ''Establishing operating requirements for production-based compliance option process units'' for the final rule. The commenters stated that the proposed title implied that no controls of any kind are being applied to these process units, when in fact facilities may be using P2 techniques to reduce emissions. The commenters also objected to wording within the proposed section that suggests that temperature is the only parameter affecting HAP emissions from the process units. The commenters suggested that the requirements be revised in the final rule to give sources more flexibility in identifying and documenting those process unit operating parameters that are critical to maintaining compliance with the PBCO limits.

Response: At proposal, our intention was to establish operating requirements for those process units complying with rule requirements without the use of an APCD. There are two situations in the PCWP rule as proposed where process units may not have an add-on control device: (1) When process units meet the PBCO, or (2) when process units used to generate emissions averaging debits do not have an add-on APCD that partially controls emissions. To clarify this for the final rule and to address the commenters' concern regarding applicability of § 63.2262(n), we changed the title of the section to ''Establishing operating requirements for process units meeting compliance options without a control device.''

We agree with the commenters that temperature alone is not necessarily the sole factor affecting HAP emissions from some process units. A variety of factors can affect HAP emissions, and the controlling parameter for one process unit may be different than the controlling parameter for another process unit. Therefore, the final rule

gives sources more flexibility in selecting and establishing operating limits for process units without add-on controls. The final rule requires facilities to identify and document the operating parameter(s) that affect HAP emissions from the process unit and to establish appropriate monitoring methods and monitoring frequencies. We recognize that it is not practical to continuously monitor every process-unit-specific factor that could affect uncontrolled emissions (*e.g.*, there is no way to monitor and determine a 3-hour block average of wood species mix for a particleboard plant). However, some parameters are suitable for continuous monitoring (*e.g.*, process operating temperature, furnish moisture content) and are already monitored as part of normal operation but not for compliance purposes. We feel that daily records of most parameters would be sufficient to ensure ongoing compliance (*e.g.*, daily average process operating temperature, furnish moisture, resin type, wood species mix) if the parameters do not deviate from the ranges for these parameters during the initial compliance test. Therefore, in the final PCWP rule, we have replaced the proposed 3-hour block average temperature monitoring requirements for process units without control devices with a requirement to maintain, on a daily basis, the process unit operating parameter(s) within the ranges established during the performance test. This gives facilities the flexibility to decide which parameters they will monitor and control, while providing enforcement personnel with records that can be used to assess and compare the day-to-day operation of the process unit to the controlling operating parameters. Facilities are also allowed to decide for each parameter the appropriate monitoring methods, monitoring frequencies, and averaging times (not to exceed 24 hours for continuously monitored parameters such as temperature and wood furnish moisture). Also, to ensure that the HAP emissions measured during the compliance tests are representative of actual emissions, the final rule requires testing at representative operating conditions, as defined in the rule.

7. Data Collection and Handling

Comment: Several commenters requested clarifications and changes to the proposed requirements related to data collection and handling for CPMS. The commenters stated that the requirement that a valid hour of data must include at least three equally spaced data values for that hour is ambiguous and should be revised. The commenters recommended that the final rule require facilities to average at least three data points taken at constant intervals, provided the interval is less than or equal to 15 minutes. The commenters further noted that a better approach would be to drop the concept of an hourly average altogether and simply calculate the block average as the average of all evenly spaced measurements in the block period with a maximum measurement interval of 15 minutes. The commenters also noted that the proposed rule did not specify how to calculate the 3-hour block average when one or more of the individual hours does not contain at least three valid data values.

Commenters also requested that the final rule consolidate and clarify the requirements in proposed §§ 63.2268 and 63.2270 regarding data that should be excluded from block averages. The commenters recommended that the final rule explicitly state that any monitoring data taken during periods when emission control equipment are not accepting emissions from the production processes should be excluded from hourly or block averages. The commenters also noted inconsistencies in the proposed rule language that seemed to imply that data collected during production downtime and SSM events would be included in the hourly averages but not in the block averages. The commenters stated that, because SSM events occur when the process is not in operation, there is no need to collect data from these periods.

Response: We agree with the commenters that the proposed rule language regarding acceptable data and data averaging was somewhat ambiguous and have revised the language accordingly. Following the commenters' recommendation, we removed the concept of an hourly average from the final rule to allow block averages to be calculated as the average of all evenly spaced measurements in the 3-hour or 24-hour block period with a maximum measurement interval of 15 minutes. In place of the requirement for a valid hourly average to contain at least three equally spaced data values for that hour, we added a minimum data availability requirement. The minimum data availability requirement specifies that to calculate data averages for each 3-hour or 24-hour averaging period, you must have at least 75 percent of the required recorded readings for that period using only recorded readings that are based on valid data. The minimum data availability requirement appears in § 63.2270(f) of today's final rule. To clarify what constitutes valid data and how to calculate block averages, we rearranged proposed §§ 63.2268 and 63.2270. We moved proposed § 63.2268(a)(3) and (4) to final § 63.2270 (now § 63.2270(d) and (e)) of today's final rule. Rather than repeating which data should be excluded from data averages in § 63.2270(d) and (e), these new sections now refer to § 63.2270(b) and (c) when discussing data that should not be included in data averages. We also added data recorded during periods of SSM to the list of data that should be excluded from data averages in § 63.2270. We feel these changes to the structure and wording of the rule should fully address the commenters' concerns.

Comment: Several commenters noted that the proposed PCWP rule does not provide any alternatives to the definition of a 1-hour period found in the MACT general provisions (40 CFR 63.2), which states that a 1-hour period is any 60-minute period commencing on the hour. These commenters requested that facilities be given the option of beginning a 1-hour period at a time that is convenient depending on shift changes, employee duties at the end of a shift, and settings on the systems that record data.

Response: We agree with the commenters and have included a definition of 1-hour period in today's final rule that omits the phrase ''commencing on the hour.''

8. Performance Specifications for CPMS

Comment: Several commenters requested that we write sections of the final rule language that address temperature measurement. The commenters stated that the phrase ''minimum tolerance of 0.75 percent,'' found in proposed sections 63.2268(b)(2), 63.2268(c)(3), and 63.2268(e)(2), should be revised to read ''accurate within 0.75 percent of sensor range.'' The commenters argued that, because tolerances usually refer to physical dimensions, this revision more accurately reflects the intent of the final PCWP rule. Commenters also recommended that the sensitivity for chart recorders be changed from a sensitivity in the minor division of at least 20°F to minor divisions of not more than 20°F. The commenters noted that the wording in the proposed rule means that minor divisions could be 30°F or 50°F, but assumed that we probably meant that 20°F is the largest minor division that a facility can use, and therefore, stated that the suggested revision is more accurate.

Response: We agree that the proposed temperature measurement requirements should be clarified. In today's final rule,

we wrote the requirement in § 63.2269(b)(2) (formerly proposed § 63.2268(b)(2)) to read ''minimum accuracy of 0.75 percent of the temperature value.'' We eliminated proposed sections §§ 63.2268(c) and 63.2268(e) from the final rule because we removed the requirements for monitoring of pressure or flow. We also wrote proposed § 63.2268(b)(3) to state that ''If a chart recorder is used, it must have a sensitivity with minor divisions of not more than 20°F.''

Comment: Several commenters requested changes to the proposed work practice requirements for dry rotary dryers and veneer redryers related to moisture monitoring. The commenters noted that the proposed requirement to use a moisture monitor with a minimum accuracy of 1 percent was appropriate for rotary dry dryers in the 25 to 35 percent moisture content range. However, the commenters stated that less stringent accuracy requirements should be included for veneer redryers to better correspond with current practices at softwood plywood and veneer facilities. Specifically, the commenters requested that the final rule revise the proposed performance specifications for moisture monitors for veneer redryers to allow the use of monitors with an accuracy of ±3 percent in the 15 to 25 percent moisture range. Several commenters also requested that the proposed calibration procedures for moisture monitors be revised in the final rule to eliminate grab sampling and to allow facilities to follow the calibration procedures recommended by the manufacturer. The commenters argued that the proposed grab sampling procedure is impractical and that obtaining a representative grab sample would be difficult.

Response: We agree with the commenters that the proposed moisture monitoring requirements should be adjusted in the final rule and have made the requested changes to the accuracy requirements for moisture monitors used with rotary dry dryers and veneer redryers. We have also adjusted the calibration procedures in the final rule to eliminate grab sampling and to allow facilities to follow the manufacturer's recommended calibration procedures for moisture monitors.

I. Routine Control Device Maintenance Exemption (RCDME)

Comment: Several commenters requested that the proposed requirements for the RCDME be modified in the final rule to give PCWP facilities more flexibility. First, the commenters requested that the proposed RCDME allowances (expressed as a percentage of the process unit operating hours) be increased. The commenters argued that the proposed downtime allowance periods are too short to allow for proper maintenance. The commenters noted that the NCASI survey that was used to set the downtime allowance only included data from 1999, and many facilities may have conducted nonannual maintenance and repairs in the years preceding or following that year. According to the commenters, the 1999 survey was also limited in that the majority of the RTO included in the survey were less than 5 years old, and as the equipment ages over a lifetime of 5 to 15 years, performance will degrade below the levels seen in the 1999 survey. Therefore, the commenters suggested that we reexamine the NCASI downtime data and use the 79th percentile instead of the 50th percentile to select downtime allowances that represent the time needed for nonannual events.

Response: After reviewing our previous analysis of the downtime data, we maintain that the percentage downtime we proposed (3 percent for some process units and 0.5 percent for others) calculated on an annual basis is appropriate for the final PCWP rule. The downtime allowance allowed under the RCDME is intended to allow facilities limited time to perform routine maintenance on their APCD without shutting down the process units being controlled by the APCD. We included the downtime allowance in the proposed rule because we recognize that frequent maintenance must be performed to combat particulate and salt buildup in some RTO and RCO for PCWP drying processes. The downtime allowance is not intended to cover every APCD maintenance activity, only those maintenance activities that are routine (*e.g.*, bakeouts, washouts, partial or full media replacements) and do not coincide with process unit shutdowns. Most APCD maintenance should occur during process unit shutdowns; the RCDME is a downtime allowance in addition to the APCD maintenance downtime that occurs during process unit shutdowns. We note that most PCWP plants do not operate 8,760 hours per year without shutdowns. For example, the MACT survey responses indicate that softwood plywood plants operate for an average 7,540 hours per year, which would allow 1,220 hours for control device maintenance without the RCDME. Furthermore, the RCDME is allowed in addition to APCD downtime associated with SSM events covered by the SSM plan (*e.g.*, electrical problems, mechanical problems, utility supply problems, and pre-filter upsets). For these reasons, the final rule retains the RCDME allowances included in the proposed rule.

Comment: Several commenters objected to the proposed requirement that the maintenance be scheduled at the beginning of the semiannual period. The commenters argued that scheduling maintenance activities at the beginning of each semiannual period is neither consistent with industry practice nor practical. The commenters noted that downtime for maintenance is scheduled as the need arises, and downtime schedules change with need and production requirements. The commenters stated that most facilities have a general idea of when they intend to conduct routine maintenance activities and will schedule those activities whenever possible to coincide with process downtime as it approaches. The commenters further noted that the proposed PCWP rule does not clarify what would happen if maintenance were necessary before the scheduled date. Therefore, the commenters concluded that deleting the requirement to set the maintenance schedule at the beginning of each semiannual period would eliminate confusion and better represent industry practice.

Response: We agree with the commenters and have removed the requirement to record the control device maintenance schedule for the semiannual period from the final rule. We agree that the proposed requirement would be impractical because process unit shutdowns are not scheduled semiannually. Also, the SSM provisions do not require scheduling of maintenance, and therefore, requiring scheduling of routine maintenance covered under the RCDME would be more restrictive than the requirements for SSM. To the extent possible, APCD maintenance should be scheduled at the same time as process unit shutdowns. Thus, today's final rule retains the requirement that startup and shutdown of emission control systems must be scheduled during times when process equipment is also shut down.

Comment: Commenters also requested that the proposed RCDME requirement that facilities must minimize emissions to the greatest extent possible during maintenance periods be revised to require that facilities make reasonable efforts to minimize emissions during maintenance. The commenters stated that this revision is necessary because the proposed wording could be interpreted to mean that sources should limit production or shut down entirely

during maintenance periods, which is contrary to the intent of the RCDME.

Response: We agree with the commenters and have modified the referenced requirement as suggested by the commenters.

J. Startup, Shutdown, and Malfunction (SSM)

Comment: Several commenters noted inconsistencies between the proposed rule and the NESHAP General Provisions (40 CFR part 63, subpart A) and requested that these inconsistencies be resolved by making the final PCWP rule consistent with the latest version of the General Provisions.

Response: Approximately 1 month prior to publication of the proposed PCWP rule, we published proposed amendments to the NESHAP General Provisions concerning SSM procedures (67 FR 72875, December 9, 2002) and promulgated them in May 2003 (68 FR 32585, May 30, 2003). Due to the timing of the these rulemakings, the proposed PCWP rule language did not reflect our most recent decisions regarding SSM. To avoid confusion and promote consistency, we have written the final rule to reference the NESHAP General Provisions directly, where applicable, and to be more consistent with other recently promulgated MACT standards. Although the amendments to the NESHAP General Provisions regarding SSM plans are currently involved in litigation, the rule requirements promulgated on May 30, 2003, apply to the final PCWP NESHAP unless and until we promulgate another revision. In response to suggestions made by commenters, we also consolidated several sections to clarify the requirements related to SSM and to eliminate redundancies in the final rule. Specifically, we combined proposed § 63.2250(d) with proposed § 63.2250(a) and revised the resulting § 63.2250(a) to clarify that the SSM periods mentioned in proposed § 63.2250(a) apply to both process units and control devices and to clarify when the compliance options, operating requirements, and work practice requirements do and do not apply. We also removed proposed § 63.2250(e) from the final rule because it was a duplication of proposed § 63.2251(e) regarding control device maintenance schedules. In addition, we removed proposed § 63.2250(f) related to RCO catalyst maintenance because this section was misplaced and is not consistent with the RCO monitoring requirements in today's final rule.

K. Risk-Based Approaches

1. General Comments

Risk-Based Approaches

Comment: Numerous commenters encouraged EPA to incorporate risk-based options which would exclude facilities that pose no significant risk to public health or the environment. Commenters stated that inclusion of risk provisions has the potential to achieve overall environmentally superior results in a cost-effective manner, particularly in cases where criteria pollutants from control devices (*i.e.*, incinerators) may result in greater impacts that the HAP emissions that they control. In particular, the commenter referred to EPA's projection that adoption of MACT floor level controls would result in increased emissions of NO_X, a precursor to ozone and PM. According to the commenter, the proposed rule (without risk provisions) would work against the industry's voluntary commitment to reduce the emissions of greenhouse gases by 12 percent over the next 10 years. The commenter concluded that, in its proposed form, the rule would impose significant additional cost with virtually no gain to either the environment or the health. The commenter stated that facilities wishing to take advantage of the risk-based exemption would take a federally-enforceable permit limit that would guarantee that their emissions remain below the risk-based emission standard. This would constitute an emission limitation, within the statutory definition of the term, and it would allow facilities to forego the installation of incinerators where they are not warranted by public health and environmental considerations, the commenter claimed.

Some commenters argued that the risk-based options are legally justified, protective of human health and the environment, and economically sensible. These commenters stated that the risk-based options are supported under the CAA, through EPA's authority under sections 112(d)(4) and 112(c)(9) to set emission standards other than MACT for certain low-risk facilities and delist technology-defined low-risk subcategories, respectively, and through what they claimed is EPA's inherent *de minimis* authority to avoid undertaking regulatory action in the absence of meaningful risk. One commenter pointed out that, by meeting the stringent health benchmarks necessary to qualify for the risk-based compliance approaches, facilities already would have satisfied the residual risk provisions 8 years ahead of the statutory requirements set forth in section 112(f) of the CAA.

Two commenters believed that the risk-based approach would particularly benefit small mills located in rural areas with timber-dependent economies. One commenter stated that, by offering manufacturers an opportunity to apply for subcategorization on a site-specific basis, facilities that are remotely located, or which were originally planned and sited with thorough consideration of airshed impacts, would not be unduly burdened with MACT requirements which yield little or no public health benefits.

Some commenters argued that such low-risk facilities should not be burdened with the requirements of MACT. One commenter noted that the regulatory framework exists within their State to implement a risk-based approach. Another commenter agreed with the concept of a risk-based approach but stated that it would not be appropriate for State and local programs to determine which facilities should be exempted from MACT. Another commenter suggested that exemptions be provided on a case-by-case basis to individual facilities that are able to demonstrate that they pose no significant risk to public health or the environment.

Several commenters opposed the risk-based exemptions. Two commenters stated that the use of risk-based concepts to evade MACT applicability is contrary to the intent of the CAA and is based on a flawed interpretation of section 112(d)(4) written by an industry subject to regulation. One commenter added that the CAA requires a technology-based floor level of control and does not provide exclusions for risk or secondary impacts in applying the MACT floor. The other commenter was concerned about industry's unprecedented proposal to include *de minimis* exemptions and cost in the MACT standard process. The commenter stated that including case-by-case risk-based exemptions would jeopardize the effectiveness of the national air toxics program to adequately protect public health and the environment and to establish a level playing field. A third commenter noted that subcategorization and source category deletions under CAA section 112(c) have been implemented several times since the MACT program began.

Some commenters pointed out that they have not been able to comment on the technical merit of the risk analysis employed by the EPA. They argued that, until the residual risk analysis procedures have been implemented via the CAA section 112(f) process, risk

analysis should not be used in making MACT determinations pursuant to CAA section 112(d)(4). Also, risk analysis could never be used to establish a MACT floor.

One commenter pointed out that, in separate rulemakings and lawsuits, EPA adopted legal positions and policies that they claimed refute and contradict the very risk-based and cost-based approaches contained in the proposal. In these other arenas, EPA properly rejected risk assessment to alter the establishment of MACT standards. The EPA also properly rejected cost in determining MACT floors and in denying a basis for avoiding the MACT floor.

Response: We feel that the assertions by one commenter about the environmental disbenefits of the PCWP rule as proposed are overstated. We disagree that the PCWP industry as a whole poses a small-to-insignificant risk to human health and the environment. However, we acknowledge that there are some PCWP affected sources that pose little risk to human health and the environment. Consequently, we have included an option in today's final PCWP rule that would allow individual affected sources to be found eligible for membership in a delisted low-risk subcategory if they demonstrate that they do not pose a significant risk to human health or the environment. The low-risk subcategory delisting in today's final PCWP rule is based on our authority under CAA sections 112(c)(1) and (9). The statute requires that categories or subcategories meet specific risk criteria in order to be delisted. To determine whether source categories and subcategories, and their constituent sources, meet these criteria, risk analyses may be used. We disagree with the commenter that we must wait for implementation of CAA section 112(f) before utilizing risk analysis in this manner. Section 112(d)(1) of the CAA gives us the authority to distinguish among classes, types, and sizes of sources within a category, and CAA section 112(c)(1) does not restrict our authority to base categories and subcategories on other appropriate criteria. As discussed in more detail elsewhere in this notice, we feel these provisions of the CAA allow us to define a subcategory of sources in terms of risk. Thus, the low-risk subcategory of PCWP affected sources is defined in terms of risk, not cost. We are not subcategorizing or determining MACT floors based on cost. Furthermore, because most affected sources will make their low-risk demonstrations following promulgation of today's final PCWP rule, the MACT level of emissions reduction required by today's final rule is not affected by affected sources becoming part of the low-risk subcategory.

We are not pursuing the risk-based exemptions based on CAA section 112(d)(4). We do not feel that a risk-based approach based on section 112(d)(4) is appropriate for the PCWP industry because PCWP facilities emit HAP for which no health thresholds have been established and because the legislative history of the 1990 Amendments to the CAA indicates that Congress considered and rejected allowing us to grant such source-specific exemptions from the MACT floor. We also are not relying on *de minimis* authority. Legal issues associated with the risk-based provisions are addressed elsewhere in this preamble.

In today's final PCWP rule, we are identifying the criteria we will use to identify low-risk PCWP affected sources and requesting that any candidate affected sources, in addition to the affected sources already identified as low risk in today's action, submit information to us based on those criteria so that we can evaluate whether they might be low-risk. Today's final PCWP rule also establishes a low-risk PCWP subcategory based on the criteria (and including several identified affected sources) and delists the subcategory based on our finding that no source that would be eligible to be included in the subcategory based on our adopted criteria emits HAP at levels that exceed the thresholds specified in section 112(c)(9)(B) of the CAA. To be found eligible to be included in the delisted source category, affected sources will have to demonstrate to us that they meet the criteria established by today's final PCWP rule and assume federally enforceable limitations that ensure their HAP emissions do not subsequently increase to exceed levels reflected in their eligibility demonstrations.

The criteria defining the low-risk subcategory of PCWP affected sources are included in appendix B to subpart DDDD of 40 CFR part 63. The criteria in the appendix were developed for and apply only to the PCWP industry and are not applicable to other industries. Today's final PCWP rule provides two ways that an affected source may demonstrate that it is part of the low-risk subcategory of PCWP affected sources. First, look-up tables allow affected sources to determine, using a limited number of site-specific input parameters, whether emissions from their sources might cause a hazard index (HI) limit for noncarcinogens or a cancer benchmark of one in a million to be exceeded. Second, a site-specific modeling approach can be used by those affected sources that cannot demonstrate that they are part of the low-risk subcategory using the look-up tables.

The low-risk subcategory delisting that is included in today's final PCWP rule is intended to avoid imposing unnecessary controls on affected sources that pose little risk to human health or the environment. Facilities will have to select controls or other methods of limiting risk and then demonstrate, using appendix B to subpart DDDD of 40 CFR part 63 and other analytical tools, such as the ''Air Toxics Risk Assessment Reference Library,'' if appropriate in a source's case, that their emissions qualify them to be included in the low-risk subcategory, and, therefore, to not be subject to the MACT compliance options included in today's final PCWP rule.

Comment: Several commenters objected to EPA using the preambles of individual rule proposals as the forum for introducing significant changes in the way that MACT standards are established. The commenter believed that allowing risk-based exemptions requires statutory changes. A third commenter expressed concern that other parties may miss commenting on the risk-based exemptions because they are contained within six separate proposals. The commenter added that to give the issue full consideration, the risk provisions should not be adopted within any of the final rules but should be addressed in one place, such as in revisions to the General Provisions of 40 CFR part 63, subpart A.

Response: The discussion of risk-based provisions in MACT was included in individual proposals for several reasons. First, we recognize that such provisions might only be appropriate for certain source categories, and our decision-making process required source category-specific input from stakeholders. Second, the 10-year MACT standards, which are now being completed, are the last group of MACT standards currently planned for development, and for any risk provisions to be useful, the provisions must be finalized in a timely manner. We do not agree that statutory changes are necessary because of the discretion provided to the Administrator under CAA section 112(d)(1) to distinguish among classes, types, and sizes of sources within a category and under CAA section 112(c)(1) to base categories and subcategories on any appropriate criteria. We consider low-risk affected

sources to be an appropriate subcategory of sources within the PCWP source category.

Comment: Several commenters stated that the risk-based exemption proposal removes the level playing field that would result from the proper implementation of technology-based MACT standards. According to the commenters, establishing a baseline level of control is essential to prevent industry from moving to areas of the country that have the least stringent air toxics programs, which was one of the primary goals of developing a uniform national air toxics program under section 112 of the 1990 CAA amendments. The commenters argued that risk-based approaches would jeopardize future reductions of HAP in a uniform and consistent manner across the nation. One commenter stated that National Air Toxics Assessment (NATA) data show that virtually no area of the country has escaped measurable concentrations of toxic air pollution. The NATA information indicates that exposure to air toxics is high in both densely populated and remote rural areas.

One commenter disagreed with the assertion that the level playing field would be removed. The commenter pointed out that the argument that EPA should impose unnecessary and potentially environmentally damaging controls for the sole purpose of equalizing control costs across facilities would be at odds with the stated purpose of the CAA. According to the commenter, the claim that the risk-based approach would favor facilities located away from population centers is incorrect. As contemplated, the risk-based approaches to the NESHAP would be keyed to the comparison of health benchmarks with reasonable maximum chronic and acute exposures. According to the commenter, the presence or absence of human populations would have no effect on whether facilities would qualify.

Response: We agree that one of the primary goals of developing a uniform national air toxics program under section 112 of the 1990 CAA amendments was to establish a level playing field. We do not feel that defining a low-risk subcategory in today's final PCWP rule does anything to remove the level playing field for PCWP facilities. Today's final PCWP rule and its criteria for demonstrating eligibility for the delisted low-risk subcategory apply uniformly to all PCWP facilities across the nation. Today's final PCWP rule establishes a baseline level of emission reduction or a baseline level of risk (for the low-risk subcategory). All PCWP affected sources are subject to these same baseline levels, and all facilities have the same opportunity to demonstrate that they are part of the delisted low-risk subcategory. The criteria for the low-risk subcategory are not dependent on local air toxics programs. Therefore, concerns regarding facilities moving to areas of the country with less-stringent air toxics programs should be alleviated.

Although NATA may show measurable concentrations of toxic air pollution across the country, these data do not suggest that PCWP facilities that do not contribute to the high exposures and risk should be included in MACT regulations, notwithstanding our authority under CAA section 112(c)(9).

Comment: One commenter stated that the dockets for the MACT proposals that contain the risk approaches make it clear that the White House Office of Management and Budget (OMB) and industry were the driving forces behind the appearance of these unlawful approaches in EPA's proposals. The commenter condemned the industry-driven agenda that it claimed is being promoted by the White House OMB.

A second commenter stated that the accusations that EPA succumbed to industry lobbying and internal pressures are entirely unfounded.

Response: We are required by Executive Order 12866 to submit to OMB for review all proposed and final rulemaking packages that would have an annual effect on the economy of $100 million or more. The comments we received from OMB reflect their position that low-risk facilities do not warrant regulation. However, the commenter is incorrect in implying that we have not exercised our independent judgment in addressing these issues. Our rationale for adopting the risk-based approach in this PCWP rulemaking is that such an approach is fully authorized under the CAA. This rule reflects the EPA Administrator's appropriate use of discretion to use CAA section 112(c)(9) to delist a low-risk subcategory.

Effects on MACT Program

Comment: Several commenters expressed concern about the impact of a risk-based approach on the MACT program. Some commenters stated that the proposal to include risk-based exemptions is contrary to the 1990 CAA Amendments, which calls for MACT standards based on technology rather than risk as a first step. The commenters pointed out that Congress incorporated the residual risk program under CAA section 112(f) to follow the MACT standards, not to replace them. One commenter added that risk-based approaches would be used separately to augment and improve technology-based standards that do not adequately provide protection to the public.

Another commenter believed that CAA section 112(d)(4) and the regulatory precedent established in over 80 MACT standards reject the inclusion of risk in the first phase of the MACT standards process. The commenter argued that the use of risk assessment at this stage of the MACT program is, in fact, directly opposed to title III of the CAA.

Response: We disagree that inclusion of a low-risk subcategory in today's final PCWP rule is contrary to the 1990 CAA Amendments. The PCWP MACT rule is a technology-based standard developed using the procedures dictated by section 112 of the CAA. The only difference between today's final PCWP rule and other MACT rules is that we used our discretion under CAA sections 112(c)(1) and (9) to subcategorize and delist low-risk affected sources, in addition to fulfilling our duties under CAA section 112(d) to set MACT. The CAA requires that categories or subcategories meet specific risk criteria, and to determine this, risk analyses may be used. We disagree with the commenter that we must wait for implementation of CAA section 112(f) before utilizing risk analysis in this manner. We feel that today's final PCWP rule is particularly well-suited for a risk-based option because of the specific pollutants that are emitted by PCWP sources. For many affected sources, the pollutants are emitted in amounts that pose little risk to the surrounding population. However, the cost of controlling these pollutants is high, and may not be justified by environmental benefits for these low-risk affected sources. Only those PCWP affected sources that demonstrate that they are low risk are eligible for inclusion in the delisted low-risk subcategory. The criteria included in today's final PCWP rule defining the delisted low-risk subcategory are based on sufficient information to develop health-protective estimates of risk and will provide ample protection of human health and the environment.

Inclusion of a low-risk subcategory in today's final PCWP rule does not alter the MACT program or affect the schedule for promulgation of the remaining MACT standards. We recognize that such provisions are only appropriate for certain source categories, and our decision-making process required source category-specific input from stakeholders. The 10-year MACT standards, which are now being completed, are the last group

of MACT standards currently planned for development, and for any risk provisions to be useful, the provisions must be finalized in a timely manner.

Comment: Several commenters stated that the inclusion of a risk-based approach would delay the MACT program and/or promulgation of the PCWP MACT standard. If the proposed approaches are inserted into upcoming standards, the commenters feared the MACT program (which is already far behind schedule) would be further delayed.

One commenter stated that they were strongly opposed to returning to the morass of risk-based analysis in an attempt to preempt the application of technology-based MACT standards and exempt facilities. The commenter stated that designing a risk-based analysis procedure would also take significant resources, as evidenced by the fact that it took five plus pages in the **Federal Register** to discuss just the basic issues to be considered in the analysis. The commenter indicated that the demand on government resources could cause a delay in the application of MACT nationwide. The commenter stated that EPA should also consider the issue of fairness since the rest of the industrial sector whose NESHAP have already been promulgated did not have a risk-based option.

Another commenter stated that it is evident that the proposed risk-based exemptions would require extensive debate and review in order to launch, which would further delay promulgation of the remaining MACT standards. The commenter stated that delays could be exacerbated by litigation following legal challenges to the rules, and such delays would trigger the CAA section 112(j) MACT hammer provision, which would unnecessarily burden the State and local agencies and the industries. The commenter concluded that, obviously, further delay is unacceptable. Another commenter agreed, stating that it is imperative that EPA meet the new deadlines for promulgating the final MACT standards.

Two commenters stated that EPA's proposal to improperly incorporate risk assessment into the technology-based standard process would cripple a MACT program already in disarray. The commenters argued that the risk-based approach could exacerbate the delay in HAP emissions reductions required by CAA section 112. One commenter noted that EPA's Office of Inspector General recently found that EPA is nearly 2 years behind in fulfilling its statutory responsibilities for implementing Phase 1 MACT standards. According to the commenter, this delay potentially harms the public and environment. The inclusion of risk-based exemptions in 10-year MACT standards would only further delay this process. The other commenter noted that EPA lacks adequate emissions and exposure data, source characterization data, and health and ecological effects information to conduct this process anyway. This commenter believed that the air toxics program is flawed and failing to protect public health and the environment and argued that it was irresponsible for EPA to pursue a deregulatory agenda that would further weaken the effectiveness of the air toxics program. The commenter noted that EPA acknowledged the complexity and delays associated with the proposed risk-based approaches in deciding not to adopt the approaches in the final BSCP rule.

Response: We disagree that identification and delisting of a low-risk subcategory in today's final PCWP rule will alter the MACT program or affect the schedule for promulgation of the remaining MACT standards, especially the PCWP MACT rule. In fact, it has not caused such a delay for the final rule. We do not anticipate any further delays in completing the remaining MACT standards. The delisting of a low-risk subcategory in today's final PCWP rule affects only the PCWP rule, and not any other MACT standards.

We feel that the final PCWP rule is particularly well-suited for a risk-based option because of the specific pollutants that are emitted. For many affected sources, the pollutants are emitted in amounts that pose little risk to the surrounding population. However, the cost of controlling these pollutants is high and may not be justified by environmental benefits for these low-risk facilities. Only those PCWP affected sources that demonstrate that they are low risk are eligible for inclusion in the delisted low-risk subcategory. The criteria defining the delisted low-risk subcategory are based on sufficient information to develop health-protective estimates of risk and will provide ample protection of human health and the environment.

The final PCWP NESHAP is being promulgated by the February 2004 court-ordered deadline. Any delays in implementation of the final PCWP NESHAP caused by legal challenges, which could and often do occur for any MACT standard we promulgate without a risk-based approach, are beyond our control.

2. Legal Authority

Section 112(d)(4) of the CAA

Comment: We received multiple comments stating that CAA section 112(d)(4) provides EPA with authority to exclude sources that emit threshold pollutants from regulation. We also received multiple comments disagreeing that CAA section 112(d)(4) can be interpreted to allow exemptions for individual sources. Several commenters supported the use of a CAA section 112(d)(4) applicability cutoffs for both threshold and non-threshold pollutants.

Response: We feel that section 112(d)(4) does not give us the authority to exempt affected sources or emission points from MACT limitations on non-threshold pollutant emissions. All PCWP facilities emit carcinogens (*e.g.*, formaldehyde), that are currently considered non-threshold pollutants. Therefore, we are not using section 112(d)(4) authority to create risk-based options for PCWP.

We are not setting a risk-based emission limit, but, rather, we are using our CAA section 112(c)(9) authority to delist affected sources that demonstrate they meet the risk and hazard criteria for being included in this low-risk subcategory.

De minimis

Comment: Some commenters attempted to identify a source of authority for risk-based approaches under the *de minimis* doctrine articulated by appellate courts. The commenters cited case law which they believe holds EPA may exempt *de minimis* sources of risk from MACT-level controls because the mandate of CAA section 112 is not extraordinarily rigid and the exemption is consistent with the CAA's health-protective purpose. The commenters argued that CAA sections 112(c)(9) and 112(f)(2) indicate that Congress considered a cancer risk below one in a million to be *de minimis* and, therefore, insufficient to justify regulation under section 112. The commenters stated that EPA's exercise of *de minimis* authority has withstood judicial challenge, and that application of *de minimis* authority is based on the degree of risk at issue, not on the mass of emissions to be regulated.

Other commenters argued that *de minimis* authority does not exist to create MACT exemptions on a facility-by-facility or category-wide basis. The commenters stated that EPA lacks *de minimis* authority to delist subcategories based on risk. The commenters further noted that EPA has not revealed any administrative record

justifying a *de minimis* exemption, to demonstrate that compliance with MACT would yield a gain of trivial or no value.

Response: We are not relying on *de minimis* principles for today's action, and therefore, do not need to respond to these comments.

Section 112(c)(9) of the CAA

Comment: Two commenters opposed using subcategorization as a mechanism to exempt facilities. One of the commenters stated that subcategorization is a tool that should be used in the standard setting process, and using it to exempt facilities would have a detrimental effect on the stringency of the MACT floor and would generally degrade the standard. According to the commenter, the two-step subcategorization proposal is inconsistent with how subcategorization has been done in numerous previous NESHAP.

The other commenter argued that EPA's subcategorization theories are unlawful. According to the commenter, CAA section 112(c)(9) does not authorize EPA to separate identical pollution sources into subcategories that are regulated differently to weed out low-risk facilities or reduce the scope/cost of the standard. The commenter stated that subcategories based solely on risk do not bear a reasonable relationship to Congress' technology-based approach or the statutory structure and purposes of CAA section 112, and are not authorized by the CAA. According to the commenter, categories and subcategories are required to be consistent with the categories of stationary sources in CAA section 111. The commenter was not aware of any instance in which EPA has established categories or subcategories based on risk. The commenter stated that EPA routinely defines subcategories based on equipment characteristics (*e.g.*, technical differences in emissions characteristics, processes, control device applicability, or opportunities for P2). According to the commenter, EPA has not offered any explanation for why reinterpreting the statute to ignore nearly 12 years of settled practices and expectations under the MACT program is reasonable, nor why reducing the applicability of HAP emission standards serves Congress's goals in enacting the 1990 CAA Amendments.

The commenter noted that EPA's discussion of the risk-based exemptions was contained in a preamble section entitled, ''Can We Achieve the Goals of the Proposed Rule in a Less Costly Manner,'' which strongly suggests that EPA's motivation for considering these risk-based approaches is consideration of cost. The commenter cited prior EPA documentation and stated that EPA in the past has rejected the notion that cost should influence MACT determination, and this prior, consistently applied interpretation better serves the purposes of CAA section 112. The commenter argued that subcategorizing to set a no-control MACT floor is the same as refusing to set a MACT standard because the benefits would be negligible, which is unlawful.

The commenter also stated that CAA section 112(c)(9)(B)(i) does not authorize EPA to delist subcategories. According to the commenter, section 112(c)(9)(B) contains two subsections: subsection (i) refers only to categories, and subsection (ii) refers to both categories and subcategories. The commenter argued that the absence of the term ''subcategories'' in section 112(c)(9)(B)(i) indicates a Congressional choice not to permit the Administrator to delist subcategories of sources under section 112(c)(9)(B). The commenter stated that this is consistent with Congress' decision to require a higher standard to delist categories that emit carcinogens. According to the commenter, the section 112(c)(9)(B)(ii) requirement of less than one in a million lifetime cancer risk for the most exposed individual is a higher and more specific standard than the standard for other HAP.

To the contrary, two commenters stated that EPA has ample authority under CAA sections 112(c)(1) and 112(c)(9) to create and delist low-risk categories or subcategories. According to the commenters, section 112(c)(1) provides the Administrator with significant flexibility to create categories and subcategories as needed to implement CAA section 112. One commenter stated that there is nothing in the statute that limits the criteria the Administrator can use in establishing categories and subcategories. The commenter added that there is also nothing in the history of EPA's interpretation of section 112(c) that precludes subcategorization based on risk. In addition, EPA has stated that emission characteristics are factors to be considered when defining categories.

The commenter stated that application of statutory authority to exclude sources from regulation under section 112(d)(3) is also supported by relevant case law, *e.g.*, in the *Vinyl Chloride* case. (*NRDC* v. *EPA*, 824 F.2D 1126 (D.C. Cir. 1987)) According to the commenter, the court in that case established a range of acceptable levels of risk in establishing limits under prior language in section 112, and the establishment of an acceptable level of risk could be used to create a low-risk subcategory that could be delisted. The commenter stated that technological or operational differences among sources may also help discriminate between low-risk and high-risk sources. The commenter stated that effective use of section 112(c)(1) authority to create risk-based subcategories would significantly improve the cost-effectiveness of the section 112 program without undermining its role in protecting public health and the environment.

Both commenters noted that CAA section 112(c)(9)(B) provides EPA with broad authority to remove from MACT applicability those categories and subcategories of facilities whose HAP emissions are sufficiently low as to demonstrate a cancer risk less than one in a million to the most exposed individual in the population (for non-threshold carcinogens) and no adverse environmental or public health effect (for threshold HAP). (The commenter asserted that Congress used the terms category and subcategory interchangeably, indicating that either one can be delisted.) One commenter suggested that sources able to demonstrate a basis for inclusion in the delisted category on a case-by-case basis would then be exempted from the MACT, subject to possible federally-enforceable conditions designed by EPA. The commenter stated that the new category could include the following: all low-risk facilities, facilities producing wood products found to pose no expected risk to human health (*i.e.*, fiberboard, medium density fiberboard and plywood), facilities with acrolein emissions below a certain threshold, or facilities selected on the basis of some other risk criterion. The commenter suggested that the low-risk category be included in the final rule and delisted within 6 months following publication of the final rule. The delisting notices would designate health benchmarks and facilities would be required to submit evidence (*e.g.*, tiered dispersion modeling) demonstrating that their emissions result in exposures that fall below the benchmarks. Following delisting of the category, an affected source could apply to EPA for a determination that it qualifies for inclusion in the low-risk category. After evaluating the source's petition, EPA would issue a written determination of applicability based on the petition that would be binding on the permitting authority (unless the petition was found to contain significant errors or omissions) and appealable by the affected source or interested parties.

The EPA could require all facilities that qualify for inclusion in the delisted category to comply with federally-enforceable conditions, similar to the conditions established in permits for synthetic minor sources (*e.g.*, limits on potential to emit, production limits).

The commenter also responded to objections regarding the subcategorization and delisting of low-risk facilities. The commenter stated that the contrasting of the terms category and subcategory offered a distinction that in no way limited EPA's authority to delist low-risk facilities. According to the commenter, the argument that EPA cannot create subcategories based on risk is contradicted by the statutory language, which expressly states that the categories and subcategories EPA creates under CAA section 112 need not match those created under CAA section 111. Furthermore, prior EPA statements do nothing to detract from EPA's broad discretion to establish categories and subcategories. The subcategorization factors previously discussed by EPA justify subcategorization based on risk. The authority cited by one commenter does not establish that EPA's discretion to alter subcategorization is limited in any way, and even if it were, EPA is not bound by any prior position. The arguments that EPA may not delist subcategories for carcinogens (or sources emitting carcinogens) rest on a formalistic distinction that EPA previously has rejected as meaningless, and that, at any rate, can be remedied with a simple recasting of a subcategory as a category. The commenter stated that doing so is undisputedly within EPA's authority.

Three commenters addressed the issue of subcategorizing PCWP facilities based on characteristics other than risk. One commenter stated that the only option that appears consistent with the CAA, does not create excessive work for State and local agencies, and may be able to be based on science, is the subcategorization and delisting approach. However, the commenter added that the subcategories should be based on equipment or fuel use, not risk. The commenter stated that a subcategory based on site-specific risk creates a circular definition and does not make sense. The commenter also stated that subcategory delisting should occur before the compliance date so that facilities do not put off compliance in the hope or anticipation of delisting.

The second commenter stated that EPA requested comment on the establishment of PCWP subcategories ostensibly based on physical and operational characteristics, but in reality based on risk. According to the commenter, this indirect approach is just a variation on the approach (direct reliance on risk) that it claims EPA itself notes would disrupt and weaken establishment of MACT floors, and is accordingly unlawful. The commenter stated that, even if these approaches were lawful, to the extent that EPA's proposal could be read to suggest that facilities could be allowed to become part of the allegedly low-risk subcategory in the future without additional EPA rulemaking, this too would be unlawful. According to the commenter, CAA section 112(c)(9) provides the EPA Administrator alone the authority to make delisting determinations, and such authority may not be delegated to other government authorities or private parties. The commenter stated that EPA's proposal suggests an approach entirely backward from the statute-allowing sources to demonstrate after-the-fact that they belong in a subcategory that has been delisted under section 112(c)(9), when the statute requires that EPA determine that no source in the category emits cancer-causing HAP above specified levels, or that no source in the category or subcategory emit non-carcinogenic HAP above specified levels, by the time EPA establishes the standard. The commenter stated that EPA has provided no explanation of how the suggested approaches would be lawful or workable.

The third commenter indicated that low risk is an adequate and appropriate criterion for categorization. The commenter disagreed that EPA should create and delist categories on a technology basis when the intent is delisting of low-risk facilities. The commenter believed that seeking a technology-based surrogate for risk is unnecessary within the statutory framework. The commenter noted that the Congressional intent was ''to avoid regulatory costs which would be without public health benefit.'' (S. Rep. No. 228, 101st Cong., 1st. Sess. 175–6 (1990)) Nevertheless, the commenter described some technology-based criteria that they believed could be used to develop low-risk groups of PCWP facilities.

Four commenters addressed the impact that creation of a low-risk subcategory under CAA section 112(c)(9) could have on the establishment of MACT floors for the PCWP category. Two commenters argued that such subcategorization would have a negative effect. One commenter stated that this situation provided a valid reason for EPA not to mix risk-based and technology-based standards development. The commenter added that EPA also did not address how the ''once in, always in'' policy would apply in such a situation. The other commenter stated that this situation was another compelling reason why the suggested section 112(c)(9) subcategorization approach was unlawful and arbitrary. The commenter stated that the flaw was so obvious, inherent, and contrary to the MACT floor provisions of CAA section 112 and its legislative history, that it proves the undoing of the suggested section 112(c)(9) exemption. According to the commenter, EPA cannot simultaneously exercise its source category delisting authority consistent with section 112(c)(9), establish appropriate MACT floors under CAA section 112(d), and establish subcategory exemptions in the manner suggested by EPA, because the latter approach contravenes both section 112(c)(9) and the section 112(d) floor-setting process. The commenter stated that CAA section 112's major source thresholds and statutory deadlines make clear that sources meeting MACT by the time EPA is required to issue MACT standards must install MACT controls and may not subsequently throw them off or be relieved from meeting the MACT-level standards. While the CAA section 112(f) residual risk process allows EPA to establish more stringent emissions standards, there is nothing in the CAA that suggests EPA possesses authority to relax promulgated MACT standards.

The third commenter indicated that dilution of the MACT floor would not occur if low-risk category delisting occurred as follows: (1) Propose low-risk category with final PCWP rule, (2) promulgate low-risk category 6 months after proposal, and (3) delist facilities prior to MACT compliance deadline. If EPA issued the final PCWP rule-thereby setting the MACT floor-before it allowed affected sources to apply for inclusion in the low-risk category to be delisted, then every affected source would be considered in the establishment of the MACT floor. Thus, as a result of this timing, the MACT floor could not be diluted because no sources would be exempted from MACT before the MACT floor is set.

The fourth commenter believed that a MACT floor reevaluation would be appropriate and would further ensure that only facilities posing significant risk are required to install expensive controls.

Response: We feel that establishing a low-risk PCWP subcategory under CAA section 112(c)(1) and deleting that subcategory under CAA section 112(c)(9) best balances Congress' dual

concerns that categories and subcategories of major sources of HAP be subject to technology-based (and possible future risk-based) emission standards, but that undue burdens not be placed on groups of sources within the PCWP source category whose HAP emissions are demonstrated to present little risk to public health and the environment. We do not contend that the CAA specifically directs us to establish categories and subcategories of HAP sources based on risk, and we recognize that, at the time of the 1990 CAA Amendments, Congress may have assumed that we would generally base categories and subcategories on the traditional technological, process, output, and product factors that had been considered under CAA section 111. However, when properly considered, it becomes apparent that Congress did not intend the unduly restrictive- and consequently over-regulatory-reading of the CAA that some commenters urge regarding low-risk PCWP facilities.

Numerous CAA section 112 provisions evidence Congress' intent that we be able to find that sources, such as those in the PCWP category whose HAP emissions are below identified risk levels, should not necessarily be subject to MACT. These provisions, together with other indications of Congressional intent regarding the goals of section 112, must all be considered in determining whether we may base a PCWP subcategory on risk and delist that group of sources, without requiring additional HAP regulation that would be redundant for purposes of meeting Congress' risk-based goals.

While it is true that CAA section 112(c)(1) provides that ''[t]o the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C[,]'' the provision also states that ''[n]othing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.'' Therefore, by its plain terms, section 112(c)(1) does not preclude basing subcategories on criteria other than those traditionally used under section 111 before 1990, or those used after 1990 for sections 111 and 112. Moreover, while after 1990 we have principally used the traditional criteria to define categories and subcategories, such use in general does not restrict how we may define a subcategory in a specific case, ''as appropriate,'' since each HAP-emitting industry presents its own unique situation and factors to be considered. (See, *e.g.*, *Sierra Club* v. *EPA*, D.C. Cir. No. 02–1253, 2004 U.S. App. LEXIS 348 (decided Jan. 13, 2004).)

Even assuming for argument that the language of section 112(c)(1) may initially appear to restrict our authority to define subcategories, section 112(c)(1) cannot be read in isolation. A broad review of the entire text, structure, and purpose of the statute, as well as Congressional intent shows that, applied within the context of CAA section 112(c)(9), our approach of defining a low-risk subcategory of PCWP affected sources is reasonable, at the very least as a way to reconcile the possible tension between the arguably restrictive language of section 112(c)(1) and the Congressional intent behind section 112(c)(9). (See, *e.g.*, *Virginia* v. *Browner*, 80 F.3d 869, 879 (4th Cir. 1996).) Alternatively, even if the language is clear on its face in restricting our ability to define subcategories, we feel that, as a matter of historical fact, Congress could not have meant what the commenter asserts it appears to have said, and that as a matter of logic and statutory structure, it almost surely could not have meant it. (See, *e.g.*, *Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d 1075, 1089 (D.C. Cir. 1996).)

Our interpretation of the CAA is a reasonable accommodation of the statutory language and Congressional intent regarding the relationship of the statutory categorization and subcategorization, delisting, MACT and residual risk provisions that apply to the PCWP category. This becomes clear in light of the issue addressed by commenters, which is whether we may delist a subcategory of low-risk PCWP affected sources only if such a group of sources is defined by criteria we have traditionally used to define categories and subcategories for regulatory, rather than delisting purposes. Our approach implements Congressional intent to avoid the over-regulatory result that flows from an overly rigid reading of the CAA. When the CAA is read as a whole, it is apparent that Congress-which in 1990 likely did not fully anticipate the policy considerations that come into play in regulating HAP emissions from PCWP affected sources-has not spoken clearly on the precise issue. Our interpretation is necessary to fill this statutory gap and prevent the thwarting of Congressional intent not to unnecessarily burden low-risk PCWP facilities by forcing them to meet stringent MACT controls when they already meet the risk-based goals of section 112. Our interpretation thus lends symmetry and coherence to the statutory scheme.

While we do not feel that CAA section 112(c)(1) actually restricts our authority to establish a low-risk PCWP subcategory, even if the language is so restrictive, it must be read within the context of Congress' purpose in allowing us to delist categories and subcategories of low-risk sources that are defined according to the traditional criteria under CAA section 111. It is beyond dispute that Congress determined that certain identifiable groups or sets of sources may be delisted if, as a group and without a single constituent source's exception, they are below the enumerated eligibility criteria of CAA section 112(c)(9). There is no apparent reason why such a group or set of sources must be limited to those defined by traditional categorization or subcategorization criteria. This is because, first, Congress in section 112(c)(1) clearly did not absolutely prohibit us from basing categories and subcategories on other criteria generally; and, second, the underlying characteristic of an eligible set or group of sources under section 112(c)(9)-that no source in the set or group presents risks above the enumerated levels-can be applied under several approaches to defining categories and subcategories and is not dependent upon such set or group being traditionally defined in order to implement the purpose of section 112(c)(9). Put another way, there is nothing apparent in the statute that precludes us from delisting a discernible set of low-risk PCWP affected sources just because that set cannot also be defined according to other traditional criteria that have nothing to do with the question of whether each of the constituent PCWP affected sources is low risk. As a matter of logic and statutory structure, Congress almost surely could not have meant to require that every identifiable group of low-risk PCWP affected sources, no matter how large in number or in percentage with respect to higher-risk affected sources in the PCWP category, must remain subject to CAA section 112, simply because that group could not be subcategorized as separate from the higher risk PCWP affected sources by application of traditional subcategorization criteria.

Where Congress squarely confronted the issue, it explicitly provided relief for categories and subcategories, defined by traditional criteria, that also happen to present little risk. (See CAA sections 112(d)(4), 112(c)(9), and 112(f)(2).) These CAA provisions addressing risk-based relief from, or thresholds for, HAP emissions regulation evidence

Congressional concern that the effects of such pollution be taken into account, where appropriate, in determining whether regulation under CAA section 112 is necessary. At the time of the 1990 Amendments, Congress did not consider it necessary to provide express relief for additional groups such as low-risk PCWP facilities, beyond those defined by traditional category and subcategory criteria, because it assumed we could implement a comprehensive regulatory scheme for air toxics that would both address situations where technology-based standards were needed to reduce source HAP emissions to levels closer to the risk-based goals of section 112, and avoid unnecessary imposition of technology-based requirements on groups of sources that were already meeting those goals. Congress enacted or revised various CAA air toxics provisions—including sections 112(c), (d) and (f)—to that end. Had events unfolded in that anticipated fashion, in the case of each industrial category and subcategory, there would have been a perfect correlation between the traditional criteria for defining categories and subcategories and the facts showing whether those groups are either high-or low-risk HAP sources.

This context turned out to be more complex than Congress anticipated, and in the case of PCWP facilities there is no clear differentiation between high- versus low-risk sources that corresponds to our traditional approach for identifying source categories and subcategories. Nevertheless, as in the case of a low-risk source group defined by traditional category or subcategory criteria, for the PCWP industry, we are able to identify a significant group of sources whose HAP emissions pose little risk to public health and the environment, applying the same section 112(c)(9) delisting criteria that would apply to any traditionally-defined source group. We feel it is reasonable to conclude that Congress would not have intended to over-regulate the low-risk PCWP affected sources due to the inability to define such a group by traditional criteria and thereby frustrate the coherent scheme Congress set forth of ensuring that HAP sources ultimately meet common risk-based goals under section 112.

The commenter's assertion that we are inappropriately altering our interpretation of the applicable statutory provisions and departing from the traditional categorization and subcategorization criteria in addressing low-risk PCWP facilities is thus unfounded. As explained above, the complexity of the air toxics problem and the relationship between the traditional criteria and what might be groups of low-risk sources, a context not fully understood by either Congress or EPA at the time of the 1990 Amendments, provides adequate justification for any unique applications of the our approach for low-risk PCWP facilities.

Our approach does not equate to one that Congress considered and rejected that would have allowed source-by-source exemptions from MACT based on individualized demonstrations that such sources are low risk. This is because, contrary to that approach, we rely upon the application of specific eligibility criteria that are defined in advance of any source's application to be included in the low-risk PCWP subcategory, in much the same way as any other applicability determination process works. Moreover, in response to the assertion that our approach nevertheless conflicts with legislative history rejecting a similar (but not identical) approach Congress considered under CAA section 112, this legislative history is not substantive legislative history demonstrating that Congress voted against relief from MACT in this situation-there is no such history. The commenters point to a provision in the House bill that was not enacted but that would have provided in certain situations for case-by-case exemptions for low-risk sources. There is no evidence that this provision was ever debated, considered, or voted upon, so its not being enacted is not probative of congressional intent concerning our ability to identify and delist a group of low-risk PCWP affected sources. Instead, it is reasonable to assume that, had Congress been aware in 1990 of the possibility that an identifiable group of PCWP affected sources is low risk, while that group does not correspond to traditional criteria differentiating categories and subcategories, Congress would have expressly, rather than implicitly, authorized our action here.

Moreover, the commenters are unable to cite any provision in CAA section 112 that would prevent us from being able to add individual or additional groups of low-risk PCWP affected sources to the group we initially identify in our final delisting action, as those additional low-risk PCWP affected sources prove their eligibility for inclusion in the delisted group over time. In fact, the approach we are taking for identifying additional low-risk PCWP affected sources is fully consistent with the approach we have long taken in identifying, on a case-by-case basis and subject to appropriate review, whether individual sources are members of a category or subcategory subject to standards adopted under CAA sections 111 and 112.

Regarding the comment that Congress did not expressly provide relief for carcinogen-emitting low-risk groups of sources within the PCWP category other than as an entire category, we construe the provisions of CAA section 112(c)(9) to apply to listed subcategories as well as to categories. This construction is logical in the context of the general regulatory scheme established by the statute, and it is the most reasonable one because section 112(c)(9)(B)(ii) expressly refers to subcategories. Under a literal reading of section 112(c)(9)(B), no subcategory could ever be delisted, notwithstanding the explicit reference to subcategories, since the introductory language of section 112(c)(9)(B) provides explicit authority to only delist categories. Such a reading makes no sense, at the very least because Congress plainly assumed we might also delist another collection of sources besides either categories or subcategories, even in the case of sources of carcinogens. Both sections 112(c)(9)(B)(i) and (ii) refer additionally to groups of sources in the case of area sources as being eligible for delisting, even though only a category of sources is specifically identified as eligible for delisting in the introductory language of section 112(c)(9)(B). In light of the broader congressional purpose behind the delisting authority, we interpret the absence of explicit references to subcategories in this introductory language and in section 112(c)(9)(B)(i) as representing nothing more than a drafting error.

Regarding the comments about establishing PCWP subcategories based on characteristics other than risk, the criteria for the low-risk subcategory we are delisting are based solely on risk and not on technological differences in equipment or emissions. We performed an analysis to determine which major source PCWP affected sources may be low-risk affected sources. Whether affected sources are low risk or not depends on the affected source HAP emissions; and affected source HAP emissions are a function of the type and amount of product(s) produced, the type of process units (*e.g.*, direct-fired versus indirect-fired dryers) used to produce the product, and the emission control systems in place. Our analysis indicates that the affected sources which show low risk could include affected sources producing various products such as particleboard, molded particleboard, medium density fiberboard, softwood plywood, softwood veneer, fiberboard, engineered wood products, hardboard, and oriented strandboard. However, there are also major sources that

produce these products that are not low risk, and, therefore, product type cannot be used to define the low-risk subcategory. There is no correlation between production rate and low-risk affected sources (*e.g.*, when affected sources are sorted by production rate for their product, the low-risk affected sources are not always at the lower end of the production rate range), so production rate cannot be used as criteria for defining the low-risk subcategory. The low-risk affected sources use a variety of process equipment (*e.g.*, veneer dryers at softwood plywood plants and tube dryer at MDF plants). This same equipment is used at PCWP plants that are not low risk, and, therefore, there is no process unit type distinction that can be used to define the low-risk subcategory. The pollutant that drives the risk estimate can vary from affected source to affected source because of the different types of process units at each affected source. There is no clear distinction among low-risk and non-low-risk affected sources when ranked by emissions of individual pollutants because of other factors that contribute to affected source risk such as presence of a co-located PCWP facility or variability in the pollutants emitted. Thus, there is no emissions distinction that can be used to define the low-risk subcategory. There is no technological basis for creating a subcategory of PCWP affected sources that are low risk. The commonality between all of the low-risk PCWP affected sources is that they are low risk, and, therefore, we have established the low-risk subcategory based on risk.

We do not agree with the commenters' assertions that our approach for the low-risk PCWP subcategory undermines our ability to identify the MACT floor for the larger PCWP category, either in today's final PCWP rule or in any future consideration of technological development under CAA section 112(d)(6). This is because, while low-risk PCWP affected sources will literally be part of a separate subcategory, there is nothing in the CAA that prevents us from including them in any consideration of what represents the best controlled similar source in the new source MACT floor context, and because it is not unprecedented for us to look outside the relevant category or subcategory in identifying the average emission limitation achieved by the best controlled existing sources if doing so enables us to best estimate what the relevant existing sources have achieved. In fact, EPA has taken this very approach in the Industrial Boilers MACT rulemaking, in order to identify the MACT floor for mercury emissions. Moreover, the unique issues presented by the low-risk PCWP subcategory show that it would be unreasonable to exclude any better-performing low-risk PCWP sources from the MACT floor pool for the larger PCWP category. Traditionally, EPA has based categories and subcategories partly on determinations of what pollution control measures can be applied to the relevant groups of sources in order to effectively and achievably reduce HAP. In other words, EPA has identified subcategories for purposes of identifying the MACT floor in a way that accounts for the differences of sources types in their abilities to control HAP emissions. But whether a PCWP source is a low-risk source does not necessarily turn on such a distinction—two sources might have identical abilities to control HAP emissions, but the unique circumstances of one source regarding the impacts of its HAP emissions will determine whether or not it is a low-risk PCWP source. (In fact, it is theoretically possible that between two sources the better performing source will be a high-risk source, and the worse-performing source will be a low-risk source, based on circumstances that are unrelated to the question of what abilities the sources have to control HAP emissions through application of MACT, such as the sources' locations vis a vis exposed human populations.) Therefore, EPA feels that not only is it appropriate to include any better-performing low risk PCWP sources in the MACT floor determinations for the larger PCWP category, but that excluding such sources simply based on the unique facts of the impacts of their emissions, with there being no difference in the abilities of high-risk and low-risk sources to apply HAP emission control measures, could result in an undesirable weakening of the MACT floor for the larger PCWP category. To that end, the MACT floors established for PCWP process units today are in no way affected by our establishment of the low-risk PCWP subcategory.

Finally, we disagree with the argument by one commenter that the low-risk PCWP subcategory approach represents an impermissible cost-based exemption from MACT or factor in determining MACT. Certainly it is true that costs may not be considered in setting the MACT floor. However, there is nothing in the CAA that prevents us from noting the cost impacts, beneficial or adverse, of our actions in setting MACT floors, assessing possible beyond-the-floor measures, or conducting risk-based actions under CAA section 112. In fact, we routinely evaluate the costs of our regulatory actions, even when cost factors may not be used to influence the regulatory decision itself, in order to comply with applicable Executive Order and statutory administrative review requirements. Simply because there is a cost benefit to some members of the PCWP category in our establishing a low-risk PCWP subcategory does not make that action impermissible, provided that our subcategorization and delisting are otherwise properly based on the appropriate risk-based criteria under CAA section 112(c)(9). Section 112 by its own terms does not forbid the goal of achieving environmental protection in a less costly manner. Similarly, it is appropriate for EPA to note the beneficial air pollution-related impacts of not requiring low-risk PCWP sources to, for example, install criteria pollutant emission-producing RTOs. While it is true that such air quality-related impacts could not constitute non-air quality health and environmental impacts that EPA must consider when setting MACT under CAA section 112(d)(2), nothing in the CAA prevents EPA from taking account of such impacts in developing its policy regarding whether it is appropriate to delist a subcategory under section 112(c)(9) when that subcategory otherwise meets the statutory criteria for delisting. Therefore, EPA does not agree with commenters who claim that its approach to delisting the low risk PCWP subcategory conflicts with how it has argued issues regarding either *de minimis* authority, cost-based exemptions from MACT, or the treatment of non-air quality impacts and the consideration of risk in setting the actual MACT standard before the U.S. Court of Appeals for the D.C. Circuit. Nor does our approach contravene any of that Court's rulings on these issues.

3. Criteria for Demonstrating Low Risk Dose-response Values

Comment: Two commenters suggested that EPA incorporate into the PCWP rule the findings of the nationwide wood products risk assessment, which they claim demonstrates that the vast majority of wood products sources cause no meaningful risk to human health or the environment at current emission levels. The commenters stated that the risk assessment used existing air dispersion modeling studies of 34 wood products facilities throughout the U.S. to estimate the maximum annual off-site HAP concentrations at wood products facilities nationwide. According to the commenters, the risk assessment indicates that large

subgroups of facilities that are affected sources under the PCWP rule as proposed (*i.e.*, fiberboard, medium density fiberboard, and plywood facilities) generally are expected to pose insignificant risks to human health, based on a comparison of predicted off-site concentrations with applicable health benchmarks. One of the commenters stated that many of the facilities with low off-site concentrations will likely be smaller plants that would not be able to justify installation of (additional) emission controls and may face closure without a risk-based compliance option. The other commenter stated that a comparison of off-site concentrations of formaldehyde and acetaldehyde with benchmarks reflecting the latest toxicological evidence indicates that exposures to those HAP are well below levels of concern. Acrolein was the only HAP with potential exposures at some affected sources (*i.e.*, subset of fiberboard, medium density fiberboard and plywood affected sources) that exceeded the health benchmark. However, the commenter stated that the acrolein findings may not represent an actual risk to human health because exceedences of the benchmark may be attributable to EPA averaging a large number of non-detects at one-half the detection limit, thereby artificially increasing predicted acrolein emissions. Based on these overall findings, the commenter concluded that the wood products risk assessment indicates that incinerator control is not warranted on the basis of human health concerns for a large number of facilities.

Response: We acknowledge receipt of the industry-sponsored nationwide wood products MACT risk assessment submitted by the commenter. However, we conducted our own risk analysis to evaluate the merits of including and delisting a low-risk subcategory in today's final PCWP rule. The methodology used in our risk analysis differed widely from the methodology used in industry's risk assessment. For example, industry's risk assessment was based on previously conducted air dispersion modeling studies for 34 PCWP facilities, while our analysis used emission estimates developed for each PCWP affected source expected to be a major source of HAP. We used different (generally more protective) human health benchmarks in our risk assessment than were used in industry's risk assessment. We also considered all HAP (including metal HAP) in our risk analysis, whereas industry's risk assessment considered only methanol, formaldehyde, acetaldehyde, acrolein, phenol, and propionaldehyde.

Based on our risk analysis, we conclude that HAP emissions from some PCWP affected sources pose little risk to human health and the environment. Therefore, we have included a subcategory of low-risk PCWP affected sources in today's final PCWP rule, and are delisting that subcategory. Appendix B to subpart DDDD of 40 CFR part 63 includes procedures that facilities may use to demonstrate that they are part of the delisted low-risk subcategory, and, therefore, are not subject to the compliance options included in today's final PCWP MACT rule. To demonstrate eligibility for the low-risk subcategory, facilities must first conduct emissions testing for up to 13 HAP (five organic HAP from all process units, seven metal HAP from direct-fired process units, and MDI from presses processing product containing MDI resin). The rationale for selection of these 13 HAP is described elsewhere in this section and in the supporting documentation for the final rule. Facilities must use the results from emissions testing to preliminarily demonstrate, subject to EPA approval, that they are part of the low-risk subcategory using either a look-up table analysis (based on the look-up tables included in appendix B to subpart DDDD of 40 CFR part 63) or site-specific risk assessment methodology (described in appendix B to subpart DDDD of 40 CFR part 63 and other analytical tools, such as the ''Air Toxics Risk Assessment Reference Library'' if appropriate for the specific source) and risk benchmarks (described in appendix B to subpart DDDD of 40 CFR part 63).

Regarding acrolein, the commenter is correct in that, when developing AP–42 emission factors, we used a value of one-half the detection limit for all non-detect sample runs if acrolein was detected in any sample runs from the applicable source category. Acrolein has been detected in process unit emissions from all sectors of the PCWP industry, except for hardwood plywood manufacturing. When using emission factors to estimate emissions from PCWP facilities, we did not estimate emissions of a pollutant when all of the emissions test runs were non-detect. However, we did use emission factors that included a mixture of detectable values and values based on one-half of the method detection limit (MDL) when acrolein was detected at least once for a particular type of process unit. We maintain that this approach to handling non-detects is appropriate for the purposes that we used the emissions data. Facilities will conduct emissions tests instead of using emission factors to demonstrate eligibility for the low-risk subcategory. To prevent facilities from including HAP that are not detected in their low-risk demonstrations, appendix B to subpart DDDD of 40 CFR part 63 states that facilities may use zero for non-detects when all of the emission test runs are below the MDL, provided that certain criteria are met to ensure that emissions testing and analysis procedures are adequate to detect low concentrations of HAP.

Comment: One commenter stated that CAA section 112(d)(4) is particularly ill-suited to the PCWP and industrial boiler source categories. The commenter stated that, even if EPA had authority to create individualized MACT exemptions based on health thresholds, it could not do so if there is insufficient evidence on the pollutants emitted to establish a NOEL. According to the commenter, section 112(d)(4) does not apply for chemicals that do not have a well-defined threshold based on reliable science. The commenter stated that available evidence does not establish a no-effect threshold for acetaldehyde, acrolein, benzene, carbon tetrachloride, chloroform, formaldehyde, manganese, methylene chloride, and phenol. As rationale, the commenter presented a summary of the available health effects data for each of these pollutants.

Response: As stated elsewhere in this preamble, we are not pursuing establishment of a threshold emission rate for the PCWP source category under CAA section 112(d)(4) because PCWP affected sources emit non-threshold pollutants. Therefore, this comment is irrelevant in the context of the PCWP rule. Comments pertaining to the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP are addressed in the comment-response document for that rule. (See Docket ID No. OAR–2002–0058.)

Comment: Two commenters expressed concern about the health benchmark data sources that EPA used. The first commenter argued that the proposal inappropriately used draft guidelines and toxicity profiles that had not been subject to public review and/or were not publicly available. The commenter was particularly concerned with the use of non-linear carcinogenic risk values and toxicity profiles (for HAP) that have not been finalized and are not available for review by the public.

The second commenter argued that EPA should not rely solely on the health benchmarks in its Integrated Risk Information System (IRIS) database. The commenter stated that IRIS, while useful for obtaining information about the health effects of chemicals, is far

from definitive, as EPA resource constraints have resulted in many chemical summaries that are significantly outdated and do not reflect the most recent scientific developments. Moreover, the commenter stated that the IRIS database is a non-statutory, in-house EPA activity, and IRIS entries are not subject to formal notice and comment. The commenter noted that EPA management has repeatedly emphasized in directives that other information must be considered, in addition to the IRIS database, when evaluating the health effects of chemicals in a regulatory context. The commenter concluded that EPA must use a scientifically appropriate health benchmark based on a consideration of all relevant information to ensure that the health benchmark is up-to-date and scientifically credible, even if that means departing from the value in IRIS.

A third commenter agreed with EPA's choice to derive their data from IRIS, California EPA (CalEPA), and Agency for Toxic Substances and Disease Registry (ATSDR) for its documentation for establishing risk based threshold and non-threshold values. The commenter added that almost all HAP are being reviewed and reevaluated on a regular basis, and it would be inappropriate to single out formaldehyde and acetaldehyde at this time. The commenter stated that EPA can only rely on what is currently published and has undergone either peer review or EPA review. According to the commenter, the issue of changing health-based guideline values will always be a concern once health-based regulations are promulgated.

Response: We agree with the first two commenters that we should use the best available sources of health effects information for risk or hazard determinations. As we have stated previously, we will not be relying exclusively on IRIS values, but will be considering all credible and readily available assessments.[1] For air toxics risk assessments, we identify pertinent toxicity or dose-response values using a default hierarchy of sources, with IRIS being the preferred source, to assist us in identifying the most scientifically appropriate benchmarks for our analyses and decisions. The IRIS process contains internal and external peer review steps and represent EPA consensus values. When adequate toxicity information is not available in IRIS, we consult other sources in a default hierarchy that recognizes the desirability of these qualities in ensuring that we have consistent and scientifically sound assessments. Furthermore, where the IRIS assessment substantially lags the current scientific knowledge, we have committed to consider alternative credible and readily available assessments. For our use, these alternatives need to be grounded in publicly available, peer-reviewed information. Formaldehyde is an example of this situation. We are not using information that does not meet these requirements. We also agree with the third commenter that the issue of changing health-based guideline values is a general challenge in setting health-based regulations. However, we are committed to setting such regulations that reflect current scientific understanding, to the extent feasible. Facilities conducting low-risk demonstrations should refer to appendix B to subpart DDDD of 40 CFR part 63 and other analytical tools, such as the ''Air Toxics Risk Assessment Guidance Reference Library'' (if appropriate for the specific source) for guidance on choosing appropriate dose-response values.

Comment: With the support of several others, one commenter pointed out that the science with respect to formaldehyde and acetaldehyde has changed since EPA's initial IRIS entries for those pollutants were completed. Consequently, the commenter believed it would be inappropriate for EPA to rely on the unit risk factors for those pollutants in the IRIS database in establishing a property line concentration threshold in the PCWP rule as proposed. The commenter supported EPA's efforts in revising its formaldehyde and acetaldehyde IRIS assessment and noted that both revisions are expected to be finalized before the final PCWP rule is published in 2004. Regarding formaldehyde, the commenter noted that EPA plans on using the model from the Chemical Industry Institute of Technology (CIIT) to revise its formaldehyde IRIS assessment and encouraged this action. The commenter pointed out that the CIIT model has been recognized by several authoritative bodies (*e.g.*, Health Canada/Environment Canada, Organization for Economic Coordination and Development, and World Health Organization) as providing the most scientifically defensible analysis of formaldehyde. (Another commenter added that the IRIS risk criteria for formaldehyde clearly cause formaldehyde risk estimates to be overstated but argued that, even using the very conservative IRIS numbers, risks are still low. A third commenter urged EPA not to use the formaldehyde values in ATSDR, stating that they are fundamentally flawed, as detailed in their comment.) Regarding acetaldehyde, the commenter recommended that EPA use a health benchmark between 27 and 390 micrograms per cubic meter ($\mu g/m^3$) and included their rationale in an attachment to their comment. If EPA is unable to complete its reassessments before the PCWP rule is finalized, the commenter encouraged EPA not to revert to the original IRIS unit risk factors for formaldehyde and acetaldehyde. Instead, the commenter recommended that EPA use the CIIT model (or alternatively defer to Health Canada/Environment Canada) for formaldehyde and, at a minimum, use the IRIS reference concentration (RfC) of 9 $\mu g/m^3$ for acetaldehyde.

Response: With the exception of formaldehyde, we are using the human health values currently used by EPA's air toxics program and available at: *http://www.epa.gov/ttn/atw/toxsource/summary.html.* These dose response values come from several sources including EPA's IRIS, the Centers for Disease Control's ATSDR, and California EPA. See the supporting information for this rulemaking for a summary of the human health values we used in our assessment.

For formaldehyde, we do not use the dose-response value reported in IRIS. The dose-response value in IRIS is based on a 1987 study, and no longer represents the best available science in the peer-reviewed literature. Since that time, significant new data and analysis have become available. We based the dose-response value we used for formaldehyde on work conducted by the CIIT Centers for Health Research (formerly, the Chemical Industry Institute of Toxicology). In 1999, the CIIT published a risk assessment which incorporated mechanistic and dosimetric information on formaldehyde that had been accumulated over the past decade. The risk assessment analyzed carcinogenic risk from inhaled formaldehyde using approaches that are consistent with EPA's draft guidelines for carcinogenic risk assessment. The CIIT model is based on computational fluid dynamics (CFD) models of airflow and formaldehyde delivery to the relevant parts of the rat and human respiratory tract, which are then coupled to a biologically-motivated two-staged clonal growth model that allows for incorporation of different biological

[1] U.S. Environmental Protection Agency. 1999. Residual Risk Report to Congress. Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, March 1999, EPA–453/R–99–001; available at *http://www.epa.gov/ttn/oarpg/t3/meta/m8690.html.* (EPA 1999)

effects. These biological effects, such as interaction with DNA and cell proliferation, are processes by which formaldehyde may contribute to development of cancer at sites exposed at the portal of entry (*e.g.*, respiratory tract). The two-staged model is a much more advanced approach for examining the relevance of tumors seen in animal models for human populations.

We believe that the CIIT modeling effort represents the best available application of the available mechanistic and dosimetric science on the dose-response for portal of entry cancers due to formaldehyde exposures. We note here that other organizations, including Health Canada, have adopted this approach. Accordingly, we have used risk estimates based on the CIIT airflow model coupled to a two-staged clonal growth model as the basis for the dose-response values for this analysis. This model incorporates state-of-the-art analyses for species-specific dosimetry, and encompasses more of the available biological data than any other currently available model. As with any model, uncertainties exist, and this model is sensitive to the inputs, but we believe it represents the best available approach for assessing the risk of portal-of-entry cancers due to formaldehyde exposures.

Currently, the CIIT information and other recent information, including recently published epidemiological studies, are being reviewed and considered in the reassessment of our formaldehyde unit risk estimate (URE). We plan to bring this reassessment to the Science Advisory Board in the summer of 2004. The feasibility of delisting a subgroup of affected sources based on risk is not compromised by the existing formaldehyde dose-response value because some affected sources would qualify for delisting based on this current value. We are moving forward with the final PCWP rule at this time because there is a court-ordered deadline, and we are including the low-risk PCWP subcategory delisting and basing our review of sources's eligibility on the CIIT model for formaldehyde. We disagree with the statement by one of the commenters that risks are still low using the current IRIS number for formaldehyde. Our analysis has demonstrated that not all PCWP affected sources can be considered low risk when either the current IRIS or CIIT URE for formaldehyde is employed.

While we recognize the similarities between acetaldehyde and formaldehyde with regard to suggested modes of action, the reassessment of acetaldehyde is lagging behind that of formaldehyde. The formaldehyde reassessment is further along because of the preponderance of data specific to formaldehyde and the potentially greater impact of a change in potency to our regulatory decisions. Unlike for formaldehyde, an alternative, peer-reviewed, publicly available assessment does not currently exist for acetaldehyde, leaving us with the current IRIS assessment. We do not feel it is necessary to wait for our acetaldehyde reassessment to be completed, due to the court-ordered deadline for the final PCWP MACT rule, and due to the fact that until otherwise concluded the IRIS values for acetaldehyde reflect the best available source of health effects information. Therefore, we are relying on the IRIS values for acetaldehyde in both cancer and non-cancer risk assessments for the final rule.

Affected sources conducting low-risk demonstrations should refer to appendix B to subpart DDDD of 40 CFR part 63 and other analytical tools, such as the ''Air Toxics Risk Assessment Reference Library'' (if appropriate for the specific source) for guidance on choosing appropriate dose-response values.

Comment: One commenter stated that EPA should consider formaldehyde and acetaldehyde as carcinogens unless a reassessment classifies them as threshold pollutants. A second commenter argued that formaldehyde and acetaldehyde are properly treated as threshold pollutants. This commenter contended that the legislative history of the CAA makes clear that Congress considered ''threshold pollutants'' to be those for which a ''no observed effect level'' can be established. (See, *e.g.*, S. Rep. No. 228, 101st Cong., 1st Sess. 175–176 (1990)). By contrast, a non-threshold pollutant is one for which a no observed effect level cannot be identified, *i.e.*, a pollutant for which adverse effects may be seen at any dose level above zero. The commenter noted that EPA has historically assumed that all carcinogens are non-threshold pollutants that may trigger a carcinogenic effect at any exposure level, no matter how small. However, as mechanistic data on the mode of action of carcinogenesis advances, that conservative assumption may prove not to be accurate for certain pollutants. The commenter stated that the available science strongly suggest that these pollutants act as threshold carcinogens. The commenter contended that there is a no observed effect level for formaldehyde below which the carcinogenic risk either does not exist or cannot be measured, as documented in an attachment to their comment. The commenter stated that acetaldehyde should be viewed similarly because acetaldehyde is similar to formaldehyde structurally and toxicologically, and is expected to behave similarly mechanistically. Because acetaldehyde is a less potent carcinogen than formaldehyde (by an order of magnitude), non-cancer health effects (which clearly are threshold health effects) are the likely risk driver for that pollutant. Finally, the commenter noted that EPA's recently issued Draft Final Guidelines for Carcinogenic Risk Assessment provide that, for non-linear carcinogens, EPA will calculate a reference dose (RfD) or RfC, which are safe lifetime doses (*i.e.*, doses below which adverse effects will not occur). The commenter stated that this is exactly what a threshold pollutant is. Thus, EPA's revised guidelines support the conclusion that formaldehyde and acetaldehyde should be treated as threshold pollutants.

Response: We agree that we should consider formaldehyde and acetaldehyde as carcinogens unless a reassessment classifies them as threshold pollutants. Currently, formaldehyde and acetaldehyde are considered probable human carcinogens. Both are under review, and their dose-response values for carcinogenicity are likely to change. For the final rule, we are using an alternative dose-response value for formaldehyde based on a peer-reviewed, publicly available assessment. However, we do not have comparable quantitative information for acetaldehyde. Therefore, we will use the current IRIS value. Affected sources conducting low-risk demonstrations should refer to appendix B to subpart DDDD of 40 CFR part 63 (and/or the ''Air Toxics Risk Assessment Reference Library'') for guidance on choosing appropriate dose-response values.

Comment: One commenter expressed concern about some of the health benchmarks that EPA plans to publish. The commenter reviewed various health studies for each pollutant and recommended several RfC values. The commenter noted that, because IRIS does not have an RfC for methanol, EPA has indicated it plans to determine a *de minimis* threshold for methanol using a value of 4.0 milligrams per cubic meter (mg/m^3) as an RfC. The commenter noted that this value is the noncancer chronic reference exposure level (REL) derived by CalEPA. The commenter stated that CalEPA's derivation of that REL contains some errors and inaccurate assumptions. According to the commenter, a more accurate estimate of a human safe level for chronic exposure to methanol by

inhalation, derived from the same mouse study data, is 171 mg/m^3, which is discussed further in their comments. The commenter stated that their discussion presents new analyses not previously reviewed by EPA and a ground-breaking new approach to a hazard assessment for methanol. The commenter noted that EPA is currently revising its assessment for acrolein and has provided for public information a draft toxicological review and draft IRIS summary for acrolein. The draft IRIS document states that the proposed new RfC of 0.03 μg/m^3 replaces the previous RfC of 0.02 μg/m^3, and that this new RfC is based on a more recent interpretation of the database. The commenter noted the basis for the revised acrolein RfC (Feron et al., 1978) and argued that EPA's interpretation of this study is overly conservative. The commenter stated that EPA has used the maximum uncertainty factors that could reasonably be justifiable and thereby developed an RfC that almost certainly goes beyond what is needed to protect human health. The commenter suggested that EPA should instead use the more realistic reference exposure level developed by CalEPA, which is more conservative than the Health Canada Tolerable Concentration.

The commenter noted that EPA has not published a health benchmark for phenol. The commenter agreed with EPA's proposal to use the CalEPA REL of 200 μg/m^3 for phenol in implementing the risk-based approach for wood products facilities. According to the commenter, the REL is intended to serve the same goal as an RfC.

The commenter supported using a health benchmark of 110 μg/m^3 for propionaldehyde and believed that this value would protect human health with an ample margin of safety. The commenter described how the 110 μg/m^3 value was derived based on the threshold limit value (TLV) for propionaldehyde identified by the American Conference of Governmental Industrial Hygienists (ACGIH). The commenter explained that this benchmark is consistent with values developed by other organizations.

Response: We are currently developing an IRIS assessment for methanol, and any new information that exists that has undergone peer review will be considered in this re-evaluation. We publish yearly in the **Federal Register** a list of all chemicals for which we are planning IRIS assessment activity. This action further requests submission of pertinent data for these chemicals. In lieu of the pending IRIS assessment, we will continue to draw on other sources identified by our established default hierarchy of data sources, which have as part of their development processes external or peer review, in addition to extensive internal reviews.

A reassessment of acrolein was completed in June of 2003. The RfC resulting from that reassessment (*i.e.*, an RfC of 0.02 μg/m^3, with an uncertainty factor of 1,000) is what is currently on IRIS. As with all announced IRIS reassessments, time was provided for new data or relevant information to be submitted. In addition, each assessment undergoes extensive internal review as well as external peer review to ensure that the data used are scientifically sound. We feel that we have developed the most scientifically sound RfC that will ensure that risk assessments using this number are health-protective. Facilities conducting low-risk demonstrations should refer to appendix B to subpart DDDD of 40 CFR part 63 (and/or the ''Air Toxics Risk Assessment Reference Library'') for guidance on choosing appropriate dose-response values.

We do not currently have plans to develop an IRIS assessment for phenol. We will continue to rely on our hierarchy of other sources when IRIS values are not available.

We do not have an IRIS file for propionaldehyde, and an assessment is not available from the alternative sources in our default hierarchy. The hierarchy sources do not include ACGIH, as that organization develops reference values for use in occupational exposure settings, as opposed to the ambient air exposures that are the focus of this action. Development of an IRIS assessment for propionaldehyde is currently underway. Once available, it will be used in future risk analyses. In the meantime, this HAP was not included in the assessment conducted for PCWP affected sources.

Comment: One commenter stated that comparison of modeled exposures to the RfC or similarly-derived health benchmark is highly protective and meets the CAA's ''ample margin of safety'' requirement. Although the commenter claims the CAA does not explicitly define ''ample margin of safety,'' in the *Vinyl Chloride* case, the D.C. Circuit Court of Appeals articulated the purpose of the ample margin of safety determination as obtaining a ''reasonable degree of protection'' in light of scientific uncertainties and information gaps. (*Natural Res. Def. Council* v. *EPA*, 824 F.2D 1146, 1152–53 (D.C. Cir. 1987)). The commenter stated that, in regulatory practice, the ample margin of safety analysis consists of a consideration of the NOEL for a pollutant and the subsequent application of factors to account for scientific uncertainty surrounding that safe level of exposure. According to the commenter, this is the approach called for by the Senate Report accompanying the 1990 CAA Amendments (S. Rep. No. 228, 101st Cong. Sess. 171 (1990)), and this is exactly what is done in deriving an RfC or similar inhalation health benchmark. The commenter stated that EPA's derivation of the RfC contains multiple layers of conservatism to account for scientific uncertainty. The commenter believed that RfC values and similar inhalation health benchmarks already incorporate sufficient uncertainty factors to fulfill or exceed the ample margin of safety mandate of CAA sections 112(d)(4) and 112(c)(9).

Response: Today's final PCWP rule will utilize CAA section 112(c)(9) rather than CAA section 112(d)(4). We agree that the CAA does not define ''ample margin of safety'' explicitly. The CAA does, however, in section 112(f) explicitly recognize our **Federal Register** notice of September 14, 1989, which described our interpretation of ample margin of safety in the case of linear carcinogens, and our approach to implementing that interpretation. While the first step identifies the presumptive limit on maximum individual risk, the second step of that 2-step approach describes the setting of the risk-based standard at a level that provides an ample margin of safety, in consideration of a number of factors. As we noted in the 1989 notice, the objective in protecting public health with an ample margin of safety under CAA section 112 is to ensure an individual lifetime risk level no higher than one in a million to the greatest number of persons possible, and to limit to no higher than one in ten thousand the estimated risk for a person living near a plant if they were exposed for 70 years.

In assessing risk or hazard of nonlinear effects, we use the RfC or comparable value. This value represents an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious non-cancer effects during a lifetime. The RfC values and comparable values are derived from assessments of pertinent toxicological information to identify the lowest point of departure (in human equivalent terms) from the experimental data that is also representative of the threshold region (the region where toxicity is apparent from the available data) for the array of toxicity data for that chemical. The objective is to select

a prominent toxic effect that is pertinent to the chemical's key mechanism or mode of action. This approach is based, in part, on the assumption that if the critical toxic effect is prevented, then all toxic effects are prevented. The RfC is derived from the point of departure (POD) (in terms of human equivalent exposure) for the critical effect by consistent application of uncertainty factors, which are to account for recognized uncertainties in the extrapolations from the experimental data conditions to an estimate appropriate to the assumed human scenario.[2]

In considering the extrapolation of the ample margin of safety objective described for linear cancer risk to the management of risk for nonlinear effects under CAA section 112(c)(9) (*i.e.*, in decisions to delist a subcategory from any further regulatory action), we consider exposures relative to the RfC or comparable values for all of the emitted HAP, with specific attention to those affecting a similar physiological target organ or system.

Comment: One commenter stated that the uncertainty factors used in deriving the wood products HAP health benchmarks are particularly large. The unit risk factors for acetaldehyde and formaldehyde were calculated using the linear multi-stage model, which assumes a linear relationship between cancer incidence and exposure to the pollutant at low doses. According to the commenter, the available data on acetaldehyde and formaldehyde strongly suggest that this assumption is incorrect and overly conservative.

The commenter pointed out that EPA's health assessment of acrolein is two to three times more conservative than CalEPA's, even though both are intended to protect sensitive individuals from any adverse effects following a lifetime of exposure. The commenter stated that EPA has developed an extremely conservative RfC for acrolein. The commenter argued that adopting a HI of 0.2 would add another five-fold safety factor to this already extremely conservative RfC. The commenter noted that acrolein is the HAP of greatest importance in determining risk from PCWP facilities.

Response: The dose-response values used to determine the criteria for defining the low-risk subcategory are drawn from IRIS, as well as from certain alternative sources. The IRIS process contains internal and external peer review steps and represents EPA consensus values. When adequate toxicity information is not available in IRIS, we consult other sources in a default hierarchy that recognizes the desirability of these qualities in ensuring that we have consistent and scientifically sound assessments. In the case of acrolein, specifically mentioned by the commenter, consultation of other sources was not necessary because the acrolein assessment was completed within the past 9 months and represents current scientific knowledge. In those cases (*e.g.*, formaldehyde), where the IRIS assessment substantially lags the current scientific knowledge, we consider alternative credible and readily available assessments. As pointed out elsewhere in this section, the RfC values or comparable values have been derived with the incorporation of uncertainty factors. The uncertainty factors are to account for recognized uncertainties in the extrapolations from the experimental data conditions pertaining to the chemical's particular toxicological data set to an estimate appropriate to the assumed human scenario.[3] The size variation of the uncertainty factors across RfC values reflects the size variation of the uncertainties associated with that extrapolation.

Comment: One commenter stated that the combination of conservative air dispersion modeling techniques and a conservative human health benchmark ensure that, where a source meets the requirements for a risk-based compliance option, human health will be protected with an ample margin of safety. The commenter pointed out that, for most individuals in the general population, actual exposures likely are one or more orders of magnitude below the maximum exposures predicted by the tiered modeling approach. The commenter noted that EPA's tiered modeling methodology is designed to identify the highest annual property line or off-site concentrations that might occur around each facility (as opposed to actual population exposure). The tiered approach models exposures of a maximally exposed individual (MEI) and incorporates a number of conservative assumptions. According to the commenter, actual average concentrations are likely to be much lower. The commenter argued that, even if the modeled concentrations were reflective of continuous average concentrations, it is highly unlikely that any individual would actually be exposed to such concentrations for a lifetime. The commenter noted that the Presidential/Congressional Commission on Risk Assessment and Risk Management concluded that the conservatism inherent in use of the MEI was often so unrealistic that its use impaired the scientific credibility of health risk assessment.

Response: We discussed a tiered analytical approach in the preamble to the proposed rule, beginning with relatively simple lookup tables and followed by increasingly more site-specific but more resource intensive tiers of analysis, with each tier being more refined. In today's final rule, we are setting forth two options, as specified in Appendix B to subpart DDDD. In the first option, affected sources can qualify for inclusion in the delisted subcategory by using site-specific emissions test data and look-up tables that were developed using health-protective input parameters. As a second option, affected sources may choose to use a more refined site-specific risk assessment. A more refined analysis requires more effort, but produces results that are less likely to overestimate risk.

Comment: One commenter noted that the regulatory requirements in the proposed rule focused on six HAP that are emitted from PCWP facilities: acrolein, acetaldehyde, formaldehyde, methanol, phenol, and propionaldehyde. Those HAP represent 96 percent of the emissions from PCWP affected sources. The commenter believes that any risk-based compliance mechanisms may reasonably be limited to consideration of the risks from these six HAP. The commenter noted that EPA's preliminary risk analysis conducted prior to proposal narrowed the list of HAP emitted from PCWP affected sources to include the following: acrolein, acetaldehyde, formaldehyde, methanol, phenol, benzene, methylene chloride, and manganese. The commenter referred to the results of their sensitivity analysis, which was conducted based on the data used in EPA's pre-proposal risk analysis. The analysis evaluated the impact of increasing or decreasing facility emissions by 30 percent, using different health benchmarks than those identified in EPA's analysis, and conducting the risk assessment with the six HAP targeted in the proposed rule versus the additional HAP identified by EPA. The commenter's sensitivity analysis showed that formaldehyde and acetaldehyde made up the bulk of the cancer risk, while benzene and methylene chloride had little or no influence on cancer risk, depending on the scenario considered. Under all scenarios, acrolein contributed the most

[2] U.S. Environmental Protection Agency. 1994. Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry. Office of Research and Development. EPA/600/8–90/066F. (EPA 1994)

[3] Ibid.

non-cancer risk. The remainder of the non-cancer risk was divided between acetaldehyde, formaldehyde and manganese, with manganese contributing between 5.6 and 12.2 percent of the non-cancer risk, depending on the scenario. Under all scenarios, methanol, benzene, methylene chloride and phenol did not contribute at all to the non-cancer risk from wood products affected sources (with one exception, where the phenol risk contribution was 0.1 percent). Based on these results, the commenter stated that there appeared to be little reason to include evaluation of methylene chloride or benzene in the risk-based compliance option. However, the commenter stated that it may be reasonable to take an extremely conservative approach and include evaluation of manganese in the risk-based compliance mechanisms.

Response: We agree that it is appropriate to limit the number of HAP that must be included in PCWP affected source low-risk demonstrations to only those HAP that may possibly result in meaningful contributions to the affected source risk. However, we disagree that limiting the HAP included in the low-risk demonstration to the six HAP defined as total HAP in subpart DDDD of 40 CFR part 63 (acrolein, acetaldehyde, formaldehyde, methanol, phenol, and propionaldehyde) is appropriate. We identified the most prevalent HAP based on mass emitted for purposes of developing MACT compliance options because MACT is technology-based (*i.e.*, the same technology that reduces emissions of the six HAP also reduces emissions of other organic HAP). As discussed earlier in this preamble, the six HAP defined as total HAP in subpart DDDD of 40 CFR part 63 are the HAP that are most often emitted in detectable amounts from the most PCWP process units, and these HAP make up 96 percent of the mass of nationwide HAP emissions from the PCWP industry. However, the risk associated with emissions of HAP are dependent on the mass emitted and the relative toxicity of each HAP. Thus, the HAP emitted in the greatest mass may not result in the most risk because the HAP may not be as potent as other HAP emitted in lower mass. For example, methanol is the HAP emitted from the PCWP industry in the greatest mass, but because methanol is not as toxic as other HAP emitted (e.g, formaldehyde, certain HAP metals), it does not result in as much risk as do other HAP. To ensure protection of public health, all HAP must be considered when determining which affected sources are low risk. Simply importing the surrogate pollutants that are reasonably used for MACT purposes into the risk assessment context is not appropriate, as surrogacy for MACT is based on factors and considerations relating to technological control capabilities and not on how surrogate pollutants might indicate how non-surrogates affect risks to human health and the environment. For example, just because in many cases particulate matter is a useful surrogate for measuring the control efficiency of devices used to capture non-mercury HAP metals, that fact is unrelated to what risks the HAP metals may present individually or collectively, as HAP metals apart from the risks they pose as being particulates.

The commenter is correct in that our preliminary risk analysis conducted prior to proposal narrowed the list of HAP emitted from PCWP affected sources. We acknowledge receipt of the commenter's sensitivity analysis based on the data used in our pre-proposal risk analysis. Following proposal, we conducted a more detailed risk analysis to evaluate the merits of including a low-risk subcategory in the final PCWP rule. This post-proposal analysis considered emissions of more than 30 HAP emitted from the PCWP source category. Many of these HAP are only emitted in minute amounts that have been detected from a small number of PCWP process units. Nevertheless, we included them in our risk analysis to determine their contribution to PCWP affected source risk. We reviewed the toxicity values for each HAP and the mass of each emitted from PCWP affected sources to determine if it would be appropriate to narrow the list of HAP that PCWP affected sources must consider in their low-risk demonstrations. Based on our review, we determined that 95 percent of the cancer risk at PCWP affected sources is accounted for by the following HAP: acetaldehyde, benzene, arsenic, beryllium, cadmium, hexavalent chromium, lead, nickel subsulfide, and formaldehyde. We also determined that 95 percent of the non-cancer risk at PCWP affected sources is accounted for by the following HAP: acetaldehyde, acrolein, formaldehyde, phenol, MDI, arsenic, cadmium, and manganese. We feel that inclusion of these HAP in a demonstration of eligibility of the low-risk PCWP subcategory is appropriate. Limiting the list of HAP that must be included in the low-risk demonstration to 13 HAP minimizes emissions testing costs, while ensuring that the HAP that drive the risk at PCWP affected sources are accounted for on a site-specific basis.

Background, Multipathway, and Ecological Exposures

Comment: Two commenters argued that multipathway exposures should not be considered for PCWP affected sources. One commenter stated that, because the HAP emitted from the PCWP source category are not bioaccumulative, it is unnecessary to consider multipathway exposures. The other commenter stated that there is no policy basis for considering multipathway exposures because U.S. Government surveys and regulatory actions demonstrate that non-inhalation exposure to the six HAP emitted by wood products affected sources is insignificant. The commenter provided rationale for the conclusion that dietary and drinking water exposures to the six HAP are not significant. Because the six HAP primarily emitted from the PCWP source category (acetaldehyde, acrolein, and formaldehyde, methanol, phenol, and propionaldehyde) do not exhibit bioaccumulative characteristics, the commenter considered it unnecessary to consider multipathway exposures.

Three commenters argued that multipathway exposures should be considered for PCWP facilities. One commenter stated that, when persistent biological toxicant or metal emissions are significant, ingestion and other pathways should be considered in the risk screening. Another commenter stated that the concentration-based applicability threshold approach in the proposed PCWP rule does not address non-inhalation exposures or adverse effects on the environment. The third commenter stated that CAA section 112(d)(4) requires EPA to consider all possible ways that a pollutant could affect human health or the environment because it refers to pollutants ''for which a health threshold has been established,'' *i.e.*, pollutants that have no adverse health or environmental effects. (See 5 Legislative History at 8511.) According to the commenter, EPA has recognized repeatedly in the past that many of the pollutants emitted by the source category are re-deposited from the atmosphere and then contaminate soil and water for long periods of time. The commenter added that these pollutants bioaccumulate in wildlife and food sources, poisoning people and animals alike. The commenter concluded that, to evaluate whether a pollutant is a threshold pollutant and what its health threshold and ample margin of safety must be, EPA must consider all the potential health and environmental effects of

deposition, persistence and bioaccumulation of that pollutant. The commenter argued that EPA would contravene section 112(d)(4) by considering only health effects caused by inhalation.

Response: This rule is relying not on CAA section 112(d)(4), but on section 112(c)(9), which states that potential ecological effects and multimedia human exposures need to be considered. We have conducted an ecological assessment and a multipathway exposure assessment on those HAP emitted from PCWP affected sources (including HAP not among the six mentioned by one commenter) that we have identified as having the potential for persisting and bioaccumulating in the environment. From this analysis we determined that adverse ecological effects and/or multimedia health effects are unlikely from PCWP affected sources. Therefore, PCWP affected sources attempting to demonstrate their low-risk status will not be required to include an ecological assessment or a multimedia assessment.

Comment: Several commenters stated that there is no legal or policy basis for EPA to consider background or multipathway (non-inhalation) exposures. The commenters claimed that CAA section 112(d) requires that MACT standards be based only on emissions from the MACT-regulated portion of the facility; it does not give EPA the authority to consider existing background levels. One commenter asserted that CAA section 112 can be distinguished from other statutory provisions, both in the CAA and in other environmental legislation, where EPA has clearly been given authority to consider background sources.

Another commenter argued that the CAA's legislative history does not support a requirement to consider other exposures. The commenter also claimed that the statutory provisions on which EPA would rely to implement the risk-based mechanisms (*i.e.*, CAA section 112(d)(4), CAA section 112(c)(9)(B), or EPA's *de minimis* authority) exclusively focus on the emissions from the source in making regulatory decisions. According to the commenter, EPA has existing regulatory programs (*e.g.*, for mobile and area sources (Urban Air Toxics Strategy)) in place to address HAP emissions from other sources.

The commenter argued that over-control of PCWP affected sources is unjustified because PCWP affected sources account for very small proportions of HAP emissions nationwide-less than 1.75 percent of acetaldehyde, 1.7 percent of acrolein, and 1 percent of formaldehyde emissions, according to their industry-sponsored risk assessment. Given these results, the commenter concluded that PCWP facilities cannot reasonably be considered to contribute meaningfully to background concentrations.

The commenter stated that delisting criteria and the so-called trigger component of the residual risk provision focus exclusively on emissions and whether the risk posed by any source in the category, by itself, exceeds one in a million cancer.

Two commenters opposed the use of available data on background concentrations and facility-specific measurement of background concentrations to determine the extent of exposures from other sources, arguing that the CAA and sound public policy warrant a focus exclusively on the emissions from the source category at hand when evaluating the applicability of a risk-based compliance option. Because a HI of 1.0 (or higher) is amply protective of public health and is warranted under EPA's statutory mandate, the commenters stated that consideration of background concentration is not appropriate.

Response: For the purposes of this rulemaking, we are not considering background HAP emissions as part of the CAA section 112(c)(9) delisting of the low-risk PCWP subcategory. As we indicated in the Residual Risk Report to Congress, however, the Agency intends to consider facility-wide HAP emissions in future CAA section 112(f) residual risk actions.

Regarding multipathway exposures, the industry's wood products MACT risk assessment does not address HAP emitted from PCWP affected sources that have the potential to bioaccumulate and persist in the environment (*e.g.*, lead, cadmium, and mercury). We conducted an exposure assessment for these HAP to determine exposure from ingestion as well as inhalation. The maximum multipathway risks were considerably lower than the predicted maximum inhalation risks from the PCWP source category. Therefore, PCWP affected sources are not required to conduct site-specific multipathway risk assessments as part of their low risk demonstrations. The look-up tables included in appendix B to subpart DDDD were developed using conservative input parameters to ensure that affected sources qualifying for the low-risk subcategory based on the look-up tables would not pose a risk via multipathway exposures.

As discussed elsewhere in this preamble, for today's final PCWP rule, we consider that an HI limit of 1.0 provides an ample margin of safety for protecting public health under CAA section 112(c)(9) for this delisting of low-risk PCWP affected sources. The RfCs that are used to calculate the HI are developed to protect sensitive subgroups and to account for scientific uncertainties, ensuring that the use of an HI limit of 1.0 provides an ample margin of safety. We conclude that an HI limit of 1.0 is appropriate for the section 112(c)(9) demonstrations for the PCWP source category that are described in today's action. In future risk-based actions for this and other source categories (*e.g.*, residual risk rulemakings under CAA section 112(f)) we may identify factors on a case-by-case basis that would lead us to conclude that HI limits other than 1.0 would be more appropriate for those other actions.

The look-up tables included in appendix B to subpart DDDD of 40 CFR part 63 were developed based on an HI of 1.0. For site-specific chronic inhalation risk assessments, affected sources are required to ensure that their TOSHI (or, alternately, a site-specific set of hazard indices based on mechanistic data or dose-response data for their HAP mixture) are less than or equal to a value of 1.0. These assessments focus on respiratory effects and CNS effects, because based on our analysis noncancer impacts were dominated primarily by impacts on these systems. Other target organs or systems were found to be negligibly impacted.

Comment: One commenter stated that EPA had provided inadequate discussion of how environmental risks would be evaluated. The commenter added that the CAA requires EPA consider the environment as well as public health, and that, at a minimum, a facility would be required to conduct an assessment based on EPA's 1998 Guidelines for Ecosystem Assessment. The commenter referred EPA to appendix A of ''Generic Assessment for Endpoints for Ecological Risk Assessment'' for a detailed discussion on the legal basis from ''such statutes as the CAA * * * that require EPA to consider and protect organism-level attributes or various taxa including fish, birds, and plants and more generally, animals, wildlife, aquatic life, and living things.''

Another commenter cited an analysis they commissioned that showed it to be highly unlikely that emissions from PCWP facilities would pose a hazard to ecological receptors at levels that are protective of human health. Thus, concern over ecological receptors would not provide a valid basis for reducing the HI below 1.0.

Response: An ecological assessment is required under sections 112(d)(4), (c)(9), and (f)(2) of the CAA regarding the presence or absence of ''adverse environmental effects'' as that term is defined in CAA section 112(a)(7). Therefore, delisting under section 112(c)(9) requires consideration of ecological effects. The look-up tables developed for today's final PCWP rule are intended to accommodate enough conservatism that any affected source qualifying for inclusion in the delisted subcategory using them will qualify based on all endpoints, including ecological endpoints. Based on our analysis of ecological effects (in the supporting information for the final rule), we feel it is unlikely that PCWP affected sources would pose any significant ecological risks to any actual ecosystem or ecosystems nearby. We also conclude, given the low impacts from the hypothetical worst-case scenario investigated, that it is unlikely that any potentially-exposed threatened or endangered species would be adversely affected by HAP emissions from these affected sources. Therefore, PCWP affected sources are not required to conduct site-specific ecological risk assessments as part of their low-risk demonstration.

Assuming the assessment referenced by the first commenter included only the six HAP listed in subpart DDDD of 40 CFR part 63, we disagree that these six HAP should be the sole focus of an ecological assessment. It is not clear from the comment whether the commenter is suggesting that we might consider lowering the human health HI values to below 1.0 in order to reflect ecological concerns or whether they are suggesting that an ecological HI value should not be reduced below 1.0. In the former case, that is not done. Human health and ecological assessments are independent assessments with their own risk management criteria.

Hazard Index

Comment: Two commenters stated that hazard quotients (HQ) for chemical mixes should not be summed to determine the HI unless the primary effects are on the same organ by the same mechanism; otherwise the risk would be overestimated. One commenter stated that CAA section 112(d)(4) refers to threshold pollutants, with each health threshold augmented by an ample margin of safety. These ample margin of safety values are already incorporated into RfC values. The risk criteria applied are confined to the effects upon which the RfC is based, which reflect the most sensitive target organ. According to the commenter, a decision to add risk posed by chemicals that affect the same target organ but have unknown mechanisms of action represents an unnecessarily conservative assumption that would tend to inflate the final risk estimate.

The commenters also noted that, according to the National Research Council and the Presidential/Congressional Commission on Risk Assessment and Risk Management, additivity at low doses is more likely to overestimate than to underestimate total risk. As stated in the Commission's 1997 Final Report: ''When the individual components of a chemical mixture exhibit different kinds of toxicity or have different biological mechanisms of toxicity, they do not interact—they act independently at low doses. In that case, the dose-response relationships for each chemical should be considered independently * * * [By contrast] studies in which similar chemicals with similar mechanisms and target were administered simultaneously indicate that antagonism is the usual outcome * * *'' (Falk and Kotin 1964, Schmal *et al.* 1977)

Response: Our recommended approach for assessing risks from exposure to a mixture of pollutants is to utilize a dose-response assessment developed for that mixture.[4] [5] There are few mixtures (*e.g.*, coke oven emissions), however, for which such assessments are available. When mixture-specific dose-response assessments are not available, a component-by-component approach is recommended. The method for component data depends on a judgment of toxicologic similarity among components. The specific term toxicologic similarity represents a general knowledge about the action of a chemical or a mixture and can be expressed in broad terms such as at the target organ level in the body. In our guidance, assumptions about toxicologic similarity are made in order to choose among risk assessment methods. In general, we assume a similar mode of action across mixtures or mixture components and, in some cases, this requirement may be relaxed to require that these chemicals act only on the same target organ.[6]

The primary method for component-based risk assessment of toxicologically similar chemicals is the HI, which is derived from dose addition. In our guidance, dose addition is interpreted as simple similar action, where the component chemicals act as if they are dilutions or concentrations of each other differing only in relative toxicity. Dose additivity may not hold for all toxic effects. Furthermore, the relative toxic potency between chemicals may differ from different types of toxicity or toxicity by different routes. To reflect these differences, the HI is then usually developed for each exposure route of interest, and for a single specific toxic effect of toxicity to a single target organ. A mixture may then be assessed by several HI, each representing one route and one toxic effect or target organ.[7]

To assess the cumulative risk or hazard associated with nonlinear effects of HAP in our analysis of PCWP affected sources, HAP hazard quotients pertaining to the same target organs or systems are summed to generate TOSHI. While it may be preferable to focus on the addition of HAP HQ that involve similar or complementary mechanisms or mode of action, that level of information is not generally available for all of the HAP on which we are focusing. Pending the availability of such data for the HAP components of the mixture being assessed, the default method employed under CAA section 112(c)(9) is to aggregate HAP HQ by target organ to generate a TOSHI.

Comment: Two commenters supported a HI of 1.0 (or greater) as an appropriate benchmark for comparing exposures attributable to affected source emissions, which should fully provide for the statutory mandate of an ample margin of safety. The commenters referred to the 1997 Final Report of the Presidential/Congressional Commission on Risk Assessment and Risk Management in Regulatory Decision-Making as support for their position. Specifically, the Commission supported a noncancer HI of 10.0, stating that there are few HAP with RfC values within a factor of 10 of their no observable adverse effects level (NOAEL). Because RfC values are typically one-thousandth of a NOAEL, a noncancer HI of 10.0 in those cases would still leave a margin of exposure of 100. The Commission recommended that EPA should, on the basis of screening assessments of source categories, do further risk assessment and analysis of categories where the noncancer HI exceeds 10.0. Where more detailed risk assessments yield noncancer hazard indices less than 1.0,

[4] U.S. Environmental Protection Agency. 1986. Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum, Washington, DC. EPA/630/R–98/002; available at *http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=20533*. (EPA 1986).

[5] U.S. Environmental Protection Agency. 2000. Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Office of Research and Development. EPA/630/R–00/002 (EPA 2000).

[6] Ibid.

[7] Ibid.

the Commission recommended that no further action be required. The commenters agreed that sources should not be required to go below that level (*e.g.*, to an arbitrary level such as 0.2), arguing that EPA has neither a legal mandate nor a rational basis for limiting the HI to less than 1.0.

One of the commenters stated that the comparison of RfC or similarly-derived health benchmarks to modeled maximum annual average concentrations is extremely health-protective and meets the ample margin of safety requirement of the statute. Given this high degree of conservatism, the commenter stated that neither the CAA nor sound policy requires that background and multipathway exposures be incorporated into an evaluation of the degree of risk posed by affected sources. Under these circumstances, the commenter argued, the mere possibility of exposure from multiple sources, or multiple HAP from a single source, does not justify a uniform adjustment to all RfC values or similarly-derived health benchmarks for all affected sources. Similarly, the commenter believed that EPA should not mandate modeling risks from the entire facility, but rather only from the portions of the facility that are within the source category.

Two other commenters objected to a noncancer HI of 1.0 (or greater). The first commenter stated that, while the HI is useful in evaluating site-specific impacts, choosing a generic HI (some multiple of 1.0) for application to a wide range of sites is inappropriate. The commenter added that selection of an arbitrary multiple of 1.0 is not science, does not conform with CAA section 112(d)(4), and does not protect public health. The commenter stated that the selection of a HI of 0.2 as a rough screening tool seemed reasonable, although it was unsupported by any analysis. The commenter added that if a default HI is used, then EPA should include a provision that would disallow its use to exclude a facility from MACT if better background information is available suggesting the default HI does not protect public health. However, the commenter believed that the CAA does not support an interpretation that includes the use of such a default to allow exemptions for individual sources. The commenter believed that the expansion of the interpretation to include non-threshold pollutants is in direct conflict with section 112(d)(4).

The second commenter evaluated the four potential options that EPA proposed to ensure that a risk analysis under CAA section 112(d)(4) considered the total ambient air concentrations of all the HAP to which the public is exposed. Option 1, which requires that the HI for all pollutants be no greater than 1.0, does not consider additional sources or background and is unacceptable, according to the commenter. Option 3, which uses existing data such as NATA to determine background and requires that the HI be no greater than 1.0, is also unacceptable, according to the commenter. The commenter pointed out that EPA has clearly stated at public meetings that the NATA is not to be used to make regulatory decisions. (As the first commenter noted, NATA information includes warnings that the information is useful for large-scale planning purposes and not for local area assessment.) The commenter added that NATA relies on data submitted to EPA voluntarily and has been reported to consistently underestimate measured concentrations. Until EPA requires that HAP inventories be submitted as proposed in the Consolidated Emissions Reporting Rule (CERR), and the NATA conducts refined modeling around stationary sources, the commenter argued that NATA should not be considered for estimating background concentrations. Option 4, which allows individual affected sources to monitor the HAP backgrounds for use in their own analysis, requires oversight and evaluation by the States to ensure proper site selections and analytical methods and should not be considered, according to the commenter. The commenter believed Option 2, which requires that the HI be no greater than 0.2, would be the only viable option at this time using a conservative risk screening analysis. However, the commenter did not endorse using any of the proposed threshold limit applicability methods to exempt process sources from NESHAP requirements.

Two other commenters raised additional objections to EPA's proposed methodologies for determining the contribution of other sources to the overall hazard. The first commenter stated that EPA had not discussed the need to assess cumulative risks, aggregate exposures, and health impacts associated with exposure to chemical mixtures emitted from affected sources within the source categories. The commenter referred EPA to the extensive progress that has been made in more completely addressing risks from exposure to air pollution and integrated decisionmaking in such areas as children's risk issues, cumulative exposure, and chemical mixtures. The commenter requested that the recent advancements be incorporated into the risk assessment methods and overall cost estimates associated with risk-based exemptions in the proposed rules.

The second commenter stated that EPA's proposed alternative methodologies for determining the contribution of other sources to cumulative risk are untenable and deeply flawed. According to the commenter, the first and second approaches (HI of 1.0 and HI of 0.2) would allow exemptions based on blanket assumptions about exposure, but EPA provided no basis for making any assumption. The commenter noted that the third option suggests relying on existing estimates of background levels of certain HAP, but argued that these information sources (*e.g.*, NATA, ATSDR) are neither designed nor adequately precise to be used as the basis of regulatory applicability determinations. According to the commenter, EPA has cautioned that NATA emission estimates ''cannot be used to identify exposures and risks for specific individuals, or even to identify exposures and risks in small geographic regions such as a specific census tract.'' (U.S. EPA, Limitations in the 1996 National-Scale Air Toxics Assessment) The commenter pointed out that NATA does not estimate exposure to a number of HAP, (*e.g.*, hydrogen fluoride (HF), HCl), and the ATSDR profiles offer generalized assessments, but are not specific enough to establish as baseline for a given facility.

Response: For today's final PCWP rule, we are considering an HI limit of 1.0 to provide an ample margin of safety for protecting public health under CAA section 112(c)(9). However, we do not feel that increasing the HI limit above 1.0 is justified by currently available science. Safety factors are included in the dose-response values used to calculate the HI to account for scientific uncertainties, and their inclusion helps ensure that using a HI limit of 1.0 provides an ample margin of safety. The TOSHI approach for site-specific risk assessment in today's final PCWP rule assumes additivity in mixtures of chemicals that target the same organ system. For their site-specific risk assessments, affected sources are encouraged to determine TOSHI for respiratory and CNS effects to simplify analysis. More detailed analysis of mixture additivity, incorporating mechanistic data and uncertainty and including dose-response data for specific mixtures, where available, may also be included in site-specific analyses using scientifically-accepted, peer-reviewed methodologies. Based on our analysis, noncancer impacts were dominated primarily by impacts on

these systems and other target organ systems were found to be negligibly impacted. We are not using background concentrations from NATA in today's final PCWP rule. Several commenters presumed the use of CAA section 112(d)(4) for the PCWP rule as proposed. However, we are using CAA section 112(c)(9) and not section 112(d)(4). Discussion of our authority to consider background and multipathway exposures is provided elsewhere in this section.

Tiered Approach

Comment: Several commenters supported EPA's proposed tiered modeling approach, which begins with simple look-up tables and progresses to more refined facility-specific risk assessments. One commenter noted that the State of Wisconsin uses a tiered approach similar to the approach proposed by EPA, and in general, this approach has worked well. The approach first allows sources to demonstrate compliance if their potential emissions, stack height, and exhaust direction are within the ranges provided in conservative look-up tables. The second tier allows facilities to provide site-specific modeling to demonstrate compliance with ambient air standards at the property line. Another commenter added that EPA should be flexible in accepting evolving improvements in exposure assessment and risk modeling, and should take into account the inherent strengths and weaknesses of the types of modeling used. A third commenter noted that most sources would use the tiered modeling approach but believed that facilities should be allowed to use any EPA-approved modeling technique to demonstrate that their emissions are below the applicable health benchmark. The commenter also recommended that, for the final PCWP rule, EPA adopt the model regulatory text that they provided for the risk-based framework.

One commenter opposed EPA's proposed tiered modeling approach, stating that if EPA decided to pursue a generic risk screening approach under section 112(d)(4), it would need to be conservative. According to the commenter, the use of a (non-tiered) conservative approach would represent the least cost to the regulated community and would be the least time-consuming for States reviewing the facility's application.

Response: We acknowledge the model regulatory text submitted by one of the commenters. However, as discussed elsewhere, we developed our own regulatory text to specify how affected sources must demonstrate that they are part of the low-risk subcategory through low-risk demonstrations. Also, we will be reviewing the low-risk demonstrations submitted by PCWP affected sources to remove the burden of reviewing risk assessments from States.

We will review all risk assessments performed in support of a demonstration of eligibility for the low-risk subcategory with regard to a variety of aspects, including the consistency of the methodology and modeling techniques with those currently accepted by the scientific community and EPA. However, we will consider assessments that use risk methodology and modeling techniques in addition to or in lieu of those described in EPA's ''Air Toxics Risk Assessment Reference Library,'' as appropriate, provided they have undergone scientific peer review pertinent to their use in the submitted assessment.

Comment: One commenter stated that, for EPA to conduct an up-front risk analysis, the procedure would need to be conducted using the most conservative stack parameters, with a hypothetical facility fence line to satisfy the many impact scenarios that could occur.

Response: We conducted a rough risk assessment to estimate the number of PCWP affected sources that might qualify for the delisted low-risk subcategory. The data used in our rough risk assessment were a combination of facility-specific data (*e.g.*, process unit throughput) and industry average data (*e.g.*, industry average stack parameters, average emission factors for estimating emissions). Facilities do not qualify for the low-risk subcategory based on our rough risk assessment, with the exception of eight affected sources who were determined to pose very low risk based on our analysis (*i.e.*, with TOSHI less than 0.1, and a cancer risk of less than 0.1 in 1 million). However, affected sources can qualify for inclusion in the delisted subcategory by using site-specific emissions test data and the look-up tables or by conducting a low-risk demonstration, as described in appendix B to subpart DDDD of 40 CFR part 63 and in other analytical tools such as the ''Air Toxics Risk Assessment Reference Library,'' (which may be appropriate for specific sources). Look-up tables were developed using the health-protective air dispersion model SCREEN3. Stack height and fenceline distance vary in the tables, so affected sources will choose the most appropriate combination of these parameters. Invariant facility parameters built into the look-up tables are either average values or biased towards health-protective values, based on available data. Thus, we believe the look-up tables are appropriately health-protective to accommodate the many impact scenarios that could occur.

Risk Assessment Guidance

Comment: Several commenters stated that EPA neglected to follow its own guidelines and science policies in its proposal for risk-based exemptions. One commenter argued that EPA had proposed a disorganized and cursory approach to implement risk-based exemptions that fell far below the quality of risk analysis typically required by EPA across its other programs. According to the commenter, the proposal did not adhere to EPA's established guidelines for characterizing human health and ecological risks, did not incorporate risk assessment guidelines for conducting multi-pathway risk assessments, and did not reference EPA guidelines for cumulative risk assessment that specifically require consideration of non-inhalation pathways. The commenter noted that EPA's March 1995 Risk Characterization Policy set goals of transparency, clarity, consistency, and reasonableness which apply to risk assessment practices across EPA. The commenter argued that the inconsistencies between EPA's proposal to provide risk-based exemptions in the MACT standard process and its risk assessment guidelines would undermine many regulatory programs throughout EPA.

The commenter stated that the risk-based scheme was based on a fundamental misunderstanding of the use of public health and ecological risk assessments in the regulatory process. The commenter added that the Federal risk assessment guidelines require EPA to conduct risk assessments consistently across all Federal environmental programs. According to the commenter, the approaches outlined by industry's white papers neglected to include risk characterization, which provides needed and appropriate information to decision makers. The approaches also did not incorporate the critical recommendation of the Commission of Risk Assessment and Risk Management to establish a framework for stakeholder-based risk management decision making. The commenter stated that these omissions in the proposal would prevent regulatory agencies from demonstrating to the public that public health and the environment are adequately protected.

Several commenters stated that EPA also needed to be consistent with residual risk guidelines currently under development. One commenter stated that the tools needed to identify sources

eligible for the risk-based exemption would be the same tools necessary for a CAA section 112(f) residual risk assessment, which the commenter understood were not yet ready for general use. Another commenter noted that the cancer risk guidelines are currently undergoing public review.

A third commenter stated they had serious reservations about EPA's apparent attempt to conduct an ad-hoc risk analysis for specific source categories by seeking comments on the specific elements to be included in the risk analysis. The commenter did not believe these rulemakings were an adequate forum to develop this risk analysis process. The commenter indicated that any risk analysis conducted by the EPA must adhere to the risk assessment principles outlined in the Residual Risk Report to Congress.

One commenter argued that the proposal is consistent with EPA risk assessment guidelines and policies and believed that others' technical objections were without merit. The commenter added that the contemplated risk-based applicability criteria were not in conflict with the classification of carcinogens and noncarcinogens.

Response: We discussed a tiered analytical approach in the preamble to the proposed rule, beginning with relatively simple lookup tables and followed by increasingly more site-specific but more resource intensive tiers of analysis, with each tier being more refined. In today's final rule, we are adopting a somewhat different approach for meeting the requirements of CAA section 112(c)(9), as discussed elsewhere in this preamble. The basis for this approach stems from the general air toxics assessment approach presented in the Residual Risk Report to Congress, which was developed with full consideration of EPA risk assessment policy, guidance, and methodology.

Section 112(c)(9) of the CAA requires us to determine whether the public and the environment are protected. Any analyses we did to establish the feasibility of the risk-based approach or to develop health-protective look-up tables included consideration of human health as well as ecological criteria. The supporting information to the final rule details the assessment we conducted to determine the feasibility of delisting a low-risk subcategory and the look-up tables we developed to be used by affected sources in their demonstrations, thereby providing a public demonstration of the method employed to ensure protection of the public health and environment in decisions associated with this rule. Additionally, protection against the potential for exposures via non-inhalation pathways (*e.g.*, ingestion) for persistent, bioaccumulative HAP is also inherent in the values in the look-up tables. As discussed previously, and in the supporting information for the final rule, we conducted a screening assessment of multipathway and ecological effects for the PCWP source category. We concluded that multipathway risks are considerably lower than predicted maximum inhalation risks and that it is unlikely that PCWP affected sources would pose any significant risk to nearby ecosystems. Therefore, affected sources are not required to conduct site-specific multipathway and ecological risk assessments as part of their low-risk demonstrations.

We agree that the tools needed to identify sources eligible for the delisted low-risk subcategory of PCWP facilities are the same tools necessary for a CAA section 112(f) residual risk assessment. And, as stated in the Residual Risk Report to Congress, we intend to rely on the general methodology and process illustrated by the framework presented in that report in our risk assessment activities throughout the air toxics program. Affected sources must demonstrate eligibility for the delisted low-risk subcategory using either a look-up table analysis (based on the look-up tables included in appendix B to subpart DDDD of this part) or using the suggested site-specific methodology described together with the criteria in appendix B to subpart DDDD of this part. The ''Air Toxics Risk Assessment Library,'' developed specifically for EPA's Residual Risk program, is provided as an example of one document that could be used for these facility-specific risk assessments. This document has been peer-reviewed and was developed according to the principles, tools and methods outlined in the Residual Risk Report to Congress. However, it may not be appropriate for all sources, and for that reason sources and EPA may consider alternative analytical tools for these risk assessments.

The comment that the new cancer guidelines are still under review is correct but, as stated in the November 29, 2001 **Federal Register** notice (66 FR 59593), these 1999 draft guidelines are to be considered the interim guidance.[8]

[8] U.S. EPA. 1999. Guidelines for Carcinogen Risk Assessment. NCEA–F–0644. Risk Assessment Forum, Washington, DC.

4. Implementation

State and Local Resources

Comment: Several commenters contended that the proposal would place a very intensive resource demand on State and local agencies (*e.g.*, permitting authorities) to review sources' risk assessments. State and local agencies may not have expertise in risk assessment methodology or the resources needed to verify information submitted with each risk assessment. The commenters argued that, if EPA intends to have the affected industries conduct the analysis, then EPA must consider the cost incurred by States, which may lack the necessary expertise to evaluate and review these analyses.

One commenter pointed out that the proposal only considered cost for the regulated source category, and not for regulatory agencies. According to the commenter, EPA did not consider the cost and resources associated with the following: (1) The public process required in reviewing and approving the proposed approaches and, if approved, making substantial changes to existing regulations; (2) the development of methods and guidance for human health and ecological risk assessments of affected sources; (3) the review by already budgetarily constrained State agencies of the assessments and assurance of adequate public participation in the process; and (4) the collection and verification of source-specific data needed for conducting risk assessments (*e.g.*, emissions data and stack parameters). The commenter added that the proposal did not address the critical need for qualified risk assessors to evaluate the scientific and technical basis for exempting affected sources from regulation on a case-by-case basis. The commenter estimated that if one additional full-time employee (FTE) were required per State to review risk-based exemptions, then the cost would be an additional $7.5 million annually.

Another commenter pointed out that the ongoing assurance that low-risk affected sources remain low risk would also increase the burden for the State and local agencies. The commenter also stated that diverting State and local resources to focus on presumably insignificant sources would detract from efforts associated with significant sources.

A third commenter stated that, since States generally do not have the right staff or resources to hire additional staff to review lengthy and complex risk analyses, they may refuse delegation of the PCWP rule, which would shift the burden to EPA in a time of tight

budgets. According to the commenter, large expenditures are not justified when only a small number of facilities may end up qualifying for an exemption.

By contrast, several commenters stated that a risk-based program approaches could be structured and implemented in a manner that would not impose a substantial cost or resource burden on States. One commenter stated that assuring compliance with risk-based applicability criteria would be straightforward and would not entail an added resource burden. Another commenter suggested that EPA work closely with States and industry to implement the risk-based approach in a non-burdensome manner. Two commenters stated that the risk-based approaches, like other MACT standards, would simply be incorporated into each State's existing title V program. Because the title V framework already exists, the addition of a risk-based MACT standard would not require States to overhaul existing permitting programs. One commenter stated that the risk-based approach would not increase the number of sources regulated by each State. The commenter believed that the final MACT rule itself should set forth the applicability criteria, including the threshold levels of exposure, that sources must meet to qualify for a risk-based determination. Each source would have the burden of demonstrating that its exposures are below this limit, and, therefore, the States would not be required to develop their own risk assessment guidance or to conduct source-specific risk assessments. One commenter stated that the risk assessment guidance to be issued by EPA within the next several months would streamline the risk-based approach and further reduce any burden on the States. Three commenters supported having States charge reasonable increased fees (as a component of annual operating permit fees or other fees) to cover any significant additional workload demands associated with reviewing more-detailed tier 2/3 modeling.

Response: We acknowledge that review of the eligibility demonstrations for the delisted low-risk subcategory will require resources for verification of information and may require expertise in risk assessment methodology that is not yet available in some States. We also acknowledge that States may choose to reject delegation of the final PCWP rule. To alleviate these concerns and to ensure consistency in the applicability determinations for the delisted low-risk subcategory from State-to-State, we will review and approve/disapprove the low-risk subcategory eligibility demonstrations submitted by PCWP facilities. As mentioned previously in this preamble, we encourage facilities to submit their assessments for review early to facilitate a timely review process.

We have considered the above comments in developing the criteria defining the delisted low-risk subcategory of PCWP affected sources, and we feel that the approach that is included in today's final PCWP rule provides clear, flexible requirements and enforceable compliance parameters. Today's final PCWP rule provides two ways that an affected source may demonstrate that it is part of the delisted low-risk subcategory of PCWP affected sources. First, look-up tables, which are included in appendix B to subpart DDDD of this part, allow affected sources to determine, using a limited number of site-specific input parameters, whether emissions from their sources might cause an HI limit to be exceeded. Finally, a site-specific modeling approach can be used by those affected sources that cannot demonstrate that they are part of the delisted low-risk subcategory using the look-up tables. With respect to guidance for performing low-risk demonstrations, one possible available set of procedures for performing risk assessments is discussed in EPA's ''Air Toxics Risk Assessment Reference Library,'' and may be used, where appropriate.

Only a portion of the 223 PCWP major sources will submit eligibility demonstrations for low-risk subcategory. Of this portion of major sources, we feel that most will find themselves in the low-risk subcategory based on screening analyses (*e.g.*, look-up table). However, it is likely that some facilities will submit more detailed risk modeling results. We are experienced in reviewing emission test results and site-specific risk assessments and will allocate resources for completion of these tasks. We will review and approve/disapprove low-risk subcategory eligibility demonstrations based on look-up table analyses and low-risk demonstrations. Following review of each low-risk subcategory eligibility demonstration for a facility, we will issue a letter of approval/disapproval to the facility and will send a carbon copy to the facility's title V permitting authority to be used to develop source-specific permit terms and conditions that will ensure that the source remains eligible for the low risk subcategory. The letter of notification regarding approval/disapproval of an affected source's low risk demonstration will also be sent to any other interested stakeholders. The criteria for low-risk subcategory delisting are clearly spelled out in today's final PCWP rule, along with criteria needed to ensure that affected sources in the low-risk subcategory remain low risk. Because these requirements are clearly spelled out in today's final PCWP rule and because any standards or requirements created under CAA section 112 are considered applicable requirements under 40 CFR part 70, the terms and conditions demonstrating eligibility for membership in the delisted low-risk subcategory would be incorporated into title V permits, pursuant to State's existing permitting programs.

With respect to the burden associated with ongoing assurance that affected sources remain low risk, the burden to States of assuring that affected sources continue to be low risk will be no more than the burden associated with ongoing title V enforcement because the parameters that rendered an affected source low risk will be reflected in terms and conditions to be incorporated into the title V permit. We have developed continuous compliance requirements for affected sources that initially qualify as low risk, and the affected sources will be responsible for demonstrating that they continue to be low risk if changes are made to the affected sources' operations that would affect the risk that the affected sources pose to human health and the environment. We will review and approve/disapprove revised low-risk demonstrations.

With respect to our consideration of the public process required in reviewing/approving the proposed approaches and making substantial changes to existing regulations, our inclusion of a risk-based compliance option in today's final PCWP rule applies only to the PCWP rule and does not directly impact other regulations. Furthermore, the PCWP proposal provided the public with the opportunity to comment on the consideration of risk in the final PCWP rule.

Regarding the assurance of adequate public participation in the process of reviewing the risk analyses, the risk-based compliance options are part of a rule that was subject to public comment. The supporting information to the final rule details the assessment we conducted to determine the feasibility of delisting a low-risk subcategory and the look-up tables we developed to be used by affected sources in their demonstrations, thereby providing a public demonstration of the method employed to ensure protection of the public health and environment in

decisions associated with the final rule. We will be responsible for reviewing the low-risk demonstrations, but, similar to facilities requesting applicability determinations regarding promulgated standards, individual low-risk demonstrations will not be subject to public review and comment. We will, however, periodically publish updating notices in the **Federal Register** identifying any additional members of the low risk PCWP subcategory (or deletions therefrom), again, similarly to how we update notices regarding applicability determinations. These actions will represent final agency actions for purposes of judicial review under CAA section 307(b)(1). However, the parameters that rendered an a affected souce part of the low-risk subcategory will be incorporated into a title V permit and subject to the public review process through title V.

Comment: One commenter stated that if EPA intends to have the affected industries conduct the analysis, then EPA must consider the additional cost incurred by smaller sources to do the analysis.

Response: As mentioned previously, there are two ways that a PCWP facility may demonstrate eligibility for the delisted low-risk subcategory: (1) Look-up tables, and (2) a site-specific modeling approach that can be used by affected sources that cannot demonstrate eligibility for the delisted low-risk subcategory using the look-up tables. The look-up tables included in appendix B to subpart DDDD of this part allow affected sources to determine, using a limited number of site-specific input parameters, whether they are eligible for the low-risk subcategory. Attempting to demonstrate eligibility for the delisted low-risk subcategory is completely voluntary. Affected sources that are not eligible for the delisted low-risk subcategory based on look-up tables are not required to pursue a site-specific analysis (which can be increasingly complex and expensive as it becomes more refined). Each facility must weigh the costs of making a low-risk demonstration with the costs of MACT compliance. We feel that in general the costs associated with demonstrating eligibility for the low-risk subcategory will be lower than the costs associated with complying with MACT for many facilities, particularly smaller facilities and other facilities that have not already otherwise installed pollution controls. The majority of the cost associated with demonstrating eligibility for the delisted low-risk subcategory will be emissions testing costs. Smaller facilities have fewer process units to be tested, and, because of their lower production rates relative to larger facilities, they will also likely have lower emissions. Thus, smaller PCWP affected sources may be more likely than their larger counterparts to fall into the delisted low-risk subcategory. Successfully demonstrating eligibility for the low-risk provisions will result in cost-savings for smaller facilities because these facilities will not have to expend the costs (*e.g.*, the costs of installing operating, and maintaining emission controls) for MACT compliance.

The cost and economic analyses developed as part of the MACT rulemaking were based on the costs to install controls and comply with the MACT requirements. The costs associated with voluntarily conducting risk analyses were not estimated. Therefore, our estimate of costs associated with today's final PCWP rule are conservative, because the control costs are significantly higher than the costs of conducting emissions tests and risk analyses.

Title V

Comment: Two commenters opposed implementing the risk-based approaches through the States' existing title V programs. One commenter stated that risk-based exemptions are such an implausible interpretation of the CAA that States do not even have the authority to grant them under their title V permit programs. The commenter was not aware of any approach to ensure that emissions remain below specified levels. According to the commenter, MACT standard applicability is the gate-keeper for being subject to a title V operating permit. Once a source is exempt from a MACT standard, it would be exempt from the monitoring, reporting and recordkeeping requirements needed to demonstrate compliance.

The other commenter stated that implementing the CAA section 112(d)(4) exemption interpretation through title V would be unlawful and unworkable. The commenter stated that Congress knew how to authorize States to establish case-by-case emission standards and implement them using post-rulemaking title V permits because it did so in CAA section 112(j). However, it did not do so in section 112(d)(4). The commenter argued that EPA lacks the authority to delegate section 112(d)(4) to the States and may not implement any section 112(d)(4) applicability cutoff through a post-rulemaking mechanism such as a title V permit. With the exception of carefully delineated compliance monitoring, reporting, and certification provisions in the statute, title V permits may not create applicable requirements or exemptions from applicable requirements. The commenter added that, even if this approach is legal, it is still unworkable because of the resource challenges faced by States and the widespread delays in issuing title V permits. The commenter noted that State permit engineers and officials that prepare and issue title V permits generally are not experts in risk assessment or air dispersion modeling. According to the commenter, States and the public would be confronted with more self-serving facility arguments and data than could be adequately scrutinized, which could cause important health and risk determinations to be rubber stamped or cause the permit process to grind to a halt. The commenter added that most State title V permit programs are already behind the statute's permit issuance deadlines, and implementation of EPA's risk-based approach would exacerbate this unlawful situation further.

Several commenters supported implementing the risk-based approaches in the PCWP rule as proposed through the States' existing title V programs. One commenter suggested that States which qualify and choose to do so should be delegated the authority to implement the risk-based alternatives. The commenter added that this would allow States to coordinate between the MACT alternatives and State air toxics requirements.

A second commenter stated that implementing the CAA section 112(d)(4) risk-based approach though title V would be lawful and workable. According to the commenter, no facility-specific post-rulemaking mechanisms nor expansion of the scope of title V permit process would be necessary, just the incorporation of the NESHAP's risk-based compliance option, which would contain the criteria for showing what the source would have to meet to qualify for the risk-based approach. The commenter stated that the objections from other commenters to the risk-based criteria were invalid, arguing that their objections were in tension with the conclusions of a CAAAC Workgroup on State/Local/Tribal air toxics issues and that their comments provided no basis for concluding that States lack the legal authority to implement the risk-based approach.

A third commenter noted that title V permits could provide enforceable limitations, appropriate recordkeeping requirements, and periodic review upon renewal. The commenter added that, since the PCWP rule would apply only to major sources, title V permits already are required and would not be an added

burden; title V could also be used to implement applicability cutoffs. However, the workload involved with the options requiring modeling, ambient monitoring, or other means to establish background concentrations would be a hindrance to any implementation mechanism. The commenter stated that, with respect to potential risk-based provisions, monitoring is more useful for demonstrating non-compliance than compliance because the regulation would apply to potential emissions under any weather conditions, whereas monitoring reflects current weather and emission conditions.

A fourth commenter suggested changes to the § 63.2240 of the proposed rule that would incorporate permitting procedures similar to those under 40 CFR part 70, which would allow facilities that pose little risk in their respective airsheds to apply for a risk determination to be incorporated into their title V permits. Each source applying to be permitted as a subcategorized toxic emitter with an acceptable risk determination would be required to perform detailed risk analyses for review by the public at large, local citizens, State agencies, and Federal authorities. This permitting exercise would allow managers of the airshed to develop custom-fit compliance plans that address source-specific risks and would allow the most flexibility for forest producers to reduce their identified risks.

Response: As discussed previously, we have determined that a CAA section 112(d)(4) risk-based exemption would not be appropriate for the PCWP source category. Instead, using our discretion in establishing subcategories of sources based on size, type, class, or other appropriate criteria under CAA sections 112(d)(1) and (c)(1), we have established a low-risk subcategory of PCWP facilities, and delisted that subcategory under CAA section 112(c)(9)(B). The requirements for qualifying for and remaining in the delisted low-risk subcategory are clearly spelled out in appendix B to subpart DDDD of this part, and any standards or requirements created under CAA section 112 are considered applicable requirements under 40 CFR part 70. Unless a PCWP source meets these conditions, it will remain subject to the PCWP MACT rules. Therefore, the parameters used to demonstrate that facilities are part of the delisted low-risk subcategory would be incorporated into title V permits as federally enforceable permit terms, and States would not have to overhaul existing permitting programs. We note that our rules implementing title V of the CAA specifically provide for situations such as this. For example, in its provisions governing what types of permit revisions may proceed through the abbreviated ''minor permit modification'' process, our rules state that such procedures may not be used ''to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.'' 40 CFR 70.7(e)(2)(i)(A)(4); 40 CFR 71.7(e)(1)(i)(A)(4). We feel that permit terms reflecting a low risk PCWP source's eligibility clearly represent such terms, and are, therefore, allowed under title V. Also, such terms would be required to be added or revised through the more formal ''significant modification'' procedures of 40 CFR 70.7(e)(4) and 40 CFR 71.7(e)(3).

Facilities that qualify as part of the delisted low-risk subcategory will initially demonstrate that they are low-risk using either the look-up tables or site-specific monitoring. They will demonstrate that risk does not increase by documenting that parameters that impact the risk analysis do not change in a way that increases risk. Facilities will not be required to perform detailed risk analyses for public review, although the public will have an opportunity to comment on draft permit terms and conditions that reflect low risk demonstrations, and to judicially challenge final EPA approvals of eligibility demonstrations under CAA section 307(b)(1).

We acknowledge the resource challenges faced by States, and, therefore, we will retain the authority to review and approve/disapprove the low-risk subcategory eligibility demonstrations submitted by PCWP facilities.

With regard to the title V permit programs being behind the statute's permit issuance deadlines, the incorporation of the NESHAP requirements is a necessary step that will require some resources. Inclusion of the low-risk subcategory delisting should be a straightforward part of the process and should not cause significant delay.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final rule is a ''significant regulatory action'' because the annual costs of complying with the final rule are expected to exceed $100 million. As such, this action was submitted to OMB for EO 12866 review. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSEES** section of this preamble).

We did not estimate health and welfare benefits associated with changes in emissions of HAP, CO, VOC, PM, NO_X and SO_2 for the final rule.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (ICR 1984.02) The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

Today's final rule will require maintenance inspections of the control devices but will not require any

notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to assure compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the rule) is estimated to be 4,692 labor hours per year, at a total annual cost of $250,528. This estimate includes notifications that facilities are subject to the rule; notifications of performance tests; notifications of compliance status, including the results of performance tests and other initial compliance demonstrations that do not include performance tests; SSM reports; semiannual compliance reports; and recordkeeping. In addition to the requirements of 40 CFR part 63, subpart A, facilities that wish to implement emissions averaging provisions must submit an EAP. Facilities may also submit a request for a routine control device maintenance exemption to justify the need for routine maintenance on the control device and to show how the facilities plan to minimize emissions to the greatest extent possible during the maintenance. The average number of respondents during the 3-year period after the effective date of the rule is 220, and the average number of responses estimated to be submitted is 197. The resulting estimated burden per response is 24 hours. Total capital/startup costs associated with the testing, monitoring, reporting, and recordkeeping requirements over the 3-year period of the ICR are estimated to be $122,040, with operation and maintenance costs of $5,178.

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. The OMB control numbers for the information collection requirements in the final rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

C. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small business ranging from 500 to 750 employees depending on the businesses NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that, based on SBA size definitions for the affected industries and reported sales and employment data, 17 of the 52 companies, or 32 percent, owning affected facilities are small businesses. Although small businesses represent 32 percent of the companies within the source category, they are expected to incur 8 percent of the total industry compliance costs of $142 million. There are three small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are seven small firms with cost-to-sales ratios between 1 and 3 percent.

We performed an economic impact analysis to estimate the changes in product price and production quantities for the firms affected by this rule. The analysis shows that of the 32 facilities owned by affected small firms, one small firm would be expected to shut down rather than incur the cost of compliance with the rule. Although any facility closure is cause for concern, it should be noted that the baseline economic condition of the facilities predicted to close affects the closure estimate provided by the economic model. Facilities which are already experiencing adverse economic conditions for reasons unconnected to this rule are more vulnerable to the impact of any new costs than those that are not.

The analysis indicates that the final rule should not generate a significant economic impact on a substantial number of small entities for the PCWP manufacturing source category for the following reasons. First, of the ten small firms that have compliance costs greater than 1 percent of sales, three small firms have compliance costs of greater than 3 percent of sales. Second, the results of the economic impact analysis show that one facility owned by a small firm out of the 32 facilities owned by affected small firms may close due to the implementation of the final rule. The facility that may close rather than incur the cost of compliance appears to have low profitability levels currently. It also should be noted that the estimate of compliance costs for this facility is likely to be an overestimate due to the lack of facility-specific data available to assign a precise control cost in this case.

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 rule on small entities. First, we considered subcategorization based on production and throughput level to determine whether smaller process units would have a different MACT floor than larger process units. Our data show that subcategorization based on size would not result in a less stringent level of control for the smaller process units. Second, we chose to set the control requirements at the MACT floor control level and not at a control level more stringent. Thus, the control level specified in the final PCWP rule is the least stringent allowed by the CAA. Third, the final rule contains multiple compliance options to provide facilities with the flexibility to comply in the least costly manner while maintaining a workable and enforceable rule. The compliance options include emissions averaging and PBCO which allow inherently low-emitting process units to comply without installing add-on control devices and facilities to use innovative technology and P2 methods. Fourth, the final rule includes multiple test method options for measuring methanol, formaldehyde, and total HAP. Fifth, the final rule allows PCWP facilities to demonstrate eligibility for the delisted low-risk subcategory and thereby avoid MACT altogether. In addition, we worked with various trade associations during the development of the final rule.

As discussed in earlier sections of this preamble, we present the impacts of the

rule associated with allowing PCWP facilities to demonstrate eligibility for the delisted low-risk subcategory and thereby avoid MACT altogether. The number of small businesses impacted is reduced to seven from the original 17, and the total number of businesses impacted is reduced to 42, down from the original 52. Small businesses represent 17 percent of the companies within the source category, which is down from the 32 percent estimate for the final rule. These small businesses are expected to incur 4 percent of the total industry compliance costs of $74 million (the costs considering inclusion of the delisted low-risk subcategory). There are no small firms with compliance costs equal to or greater than 3 percent of their sales as compared to three for the final rule. In addition, there are four small firms with cost-to-sales ratios between 1 and 3 percent, which is down from seven for the final rule.

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 by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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.

Since the final rule is estimated to impose costs to the private sector in excess of $100 million per year, it is considered a significant regulatory action. Therefore, we have prepared the following statement with respect to sections 202 through 205 of the UMRA.

1. Statutory Authority

This final rule establishes control requirements for existing and new PCWP sources pursuant to section 112 of the CAA. The CAA requires NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This is commonly referred to as MACT. Section 112(d)(3) of the CAA further defines a minimum level of control that can be considered for MACT standards, commonly referred to as the MACT floor, which for new sources is the level of control achieved by the best controlled similar source, and for existing sources is the level of control achieved by the average of the best performing 12 percent of sources in the category (or the best-performing five sources for categories with fewer than 30 sources).

Control technologies and their performance are discussed in the background information document for this proposal (Docket numbers A–98–44 and OAR–2003–0048). We considered emission reductions, costs, environmental impacts, and energy impacts in selecting the MACT standards. The final standards achieve sizable reductions in HAP and other pollutant emissions.

2. Social Costs and Benefits

The regulatory analyses prepared for the final rule, including our assessment of costs and benefits, is detailed in the ''Regulatory Impact Analysis for the Plywood and Composite Wood Products NESHAP'' in Docket ID No. A–98–44. Based on estimated compliance costs associated with the final rule and the predicted change in prices and production in the affected industries, the estimated social costs of the final rule are $135.1 million (1999 dollars). The social costs of the final rule are the costs imposed upon society as a result of efforts toward compliance, and include the effects upon consumers of products made by the affected facilities.

It is estimated that 3 years after implementation of the final rule, HAP would be reduced by 9,900 Mg/yr (11,000 tons/yr) due to reductions in formaldehyde, acetaldehyde, acrolein, methanol and other HAP from PCWP sources. Formaldehyde and acetaldehyde have been classified as ''probable human carcinogens.'' Acrolein, methanol and the other HAP are not considered carcinogenic, but produce several other toxic effects. The requirements of the final rule would also achieve reductions of 9,500 Mg/yr (10,000 tons/yr) of CO, approximately 11,000 Mg/yr (12,000 tons/yr) of PM10, and approximately 25,000 Mg/yr (27,000 tons/yr) of VOC (approximated as THC). Exposure to CO can effect the cardiovascular system and the CNS. The PM emissions can result in fatalities and many respiratory problems (such as asthma or bronchitis). These estimates will be reduced to the extent facilities demonstrate eligibility to be included in the delisted low-risk subcategory. These estimated reductions occur from existing sources in operation 3 years after implementation of the requirements of the final rule and are expected to continue throughout the life of the sources. Human health effects associated with exposure to CO include cardiovascular system and CNS effects, which are directly related to reduced oxygen content of blood and which can result in modification of visual perception, hearing, motor and sensorimotor performance, vigilance, and cognitive ability. The VOC emissions reductions may lead to some reduction in ozone concentrations in areas in which the affected sources are located. There are both human health and welfare effects that result from exposure to ozone, and these effects are listed in Table 3 of this preamble.

As mentioned earlier in this preamble, we are unable to provide a comprehensive quantification and monetization of the HAP-related benefits of the final rule. Nevertheless, it is possible to derive rough estimates for one of the more important benefit categories, *i.e.*, the potential number of cancer cases avoided and cancer risk reduced as a result of the imposition of the MACT level of control on this source category. Our analysis suggests that imposition of the MACT level of control would reduce cancer cases by less than one case per year, on average, starting some years after implementation of the standards. We present these results in the RIA. This risk reduction estimate is uncertain and should be regarded as an extremely rough estimate and should be viewed in the context of the full spectrum of unquantified noncancer effects associated with the HAP reductions.

At the present time, we cannot provide a monetary estimate for the benefits associated with the reductions in CO. We also did not provide a monetary estimate for the benefits associated with the changes in ozone concentrations that result from the VOC emissions reductions since we are unable to do the necessary air quality modeling to estimate the ozone concentration changes. For PM_{10}, we did not provide a monetary estimate for the benefits associated with the reduction of these emissions, although these reductions are likely to have significant health benefits to populations living in the vicinity of affected sources.

There may be increases in NO_X emissions associated with today's final rule as a result of increased use of incineration-based controls. These NO_X emission increases by themselves could cause some increase in ozone and PM concentrations, which could lead to impacts on human health and welfare as listed in Table 3 of this preamble. The potential impacts associated with increases in ambient PM and ozone due to these emission increases are discussed in the RIA. In addition to potential NO_X increases at affected sources, today's final rule may also result in additional electricity use at affected sources due to application of controls. These potential increases in electricity use may increase emissions of SO_2 and NO_X from electricity generating utilities. As such, the final rule may result in additional health impacts from increased ambient PM and ozone from these increased utility emissions. However, it is possible that the Acid Rain trading program may serve to keep SO_2 emissions from increasing, and the NO_X SIP call may serve to mitigate increases of NO_X. We did not quantify or monetize these impacts.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to CO. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. These general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references.

3. Regulatory Alternatives Considered

The final standards reflect the MACT floor, the least stringent regulatory alternative required under the CAA. In addition, the final rule includes the least burdensome and most flexible monitoring, reporting, and recordkeeping requirements that we feel will assure compliance with the compliance options and rule requirements. Therefore, the standards reflect the least costly, most cost-effective, and least burdensome regulatory option that achieves the objectives of the final rule.

4. Effects on the National Economy

The economic impact analysis for the final rule estimates effects upon employment and foreign trade for the industries affected by the rule. The total reduction in employment for the affected industries is 0.3 percent of the current employment level (or 225 employees). This estimate includes the increase in employment among firms in these industries that do not incur any cost associated with the final rule. There is also minimal change in the foreign trade behavior for the firms in these industries since the level of imports of affected composite wood products only increases by less than 0.1 percent. There will be reductions in effects on the national economy associated with eligibility of sources for the delisted low-risk subcategory. The employment level will now be reduced by 126 employees, which is 99 fewer than the reduction estimated for the final rule. The increase in the level of imports is half as large as that for the final rule.

5. Consultation With Government Officials

Throughout the development of the final rule, we interacted with representatives of affected State and local officials to inform them of the progress of our rulemaking efforts. We also consulted with representatives from other entities affected by the final rule, such as the American Forest & Paper Association, National Council for Air and Stream Improvement, APA-The Engineered Wood Association, Composite Panel Association, American Hardboard Association, Hardwood Plywood and Veneer Association, and representatives from affected companies.

The number of small entities that are significantly affected by today's final PCWP standards is not expected to be substantial. The final rule contains no regulatory requirements that might significantly affect small governments because no PCWP facilities are owned by such governments. The full analysis of potential regulatory impacts on small organizations, small governments, and small businesses is included in the economic impact analysis in the docket and is listed at the beginning of today's action under **SUPPLEMENTARY INFORMATION.** Because the number of small entities that are likely to experience significant economic impacts as a result of today's final standards is not expected to be substantial, no plan to inform and advise small governments is required under section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (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.'' Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with

federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's 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 facilities are owned or operated by State governments, and the final rule requirements will not supercede State regulations that are more stringent. Thus, the requirements of Executive Order 13132 do not apply to the final rule.

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

Executive Order 13175 (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.''

Today's 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. No affected plant sites are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to the final rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to feel may have a disproportionate effect on children. If the regulatory action meets both criteria, the 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 Agency does not have reason to feel that the environmental health or safety risks associated with the emissions addressed by today's final rule present a disproportionate risk to children. This demonstration is based on the fact that the noncancer human health values we used in our analysis (*e.g.,* RfC) are determined to be protective of sensitive subpopulations, including children. Also, while the cancer human health values do not always expressly account for cancer effects in children, the cancer risks posed by PCWP facilities that meet the eligibility criteria for being included in the delisted low-risk subcategory will be sufficiently low so as not to be a concern for anyone in the population, including children.

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

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' The final rule is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for the determination is as follows.

The final rule affects manufacturers in the softwood veneer and plywood (NAICS 321212), reconstituted wood products (NAICS 321219), and engineered wood products (NAICS 321213) industries. There is no crude oil, fuel, or coal production from these industries. Hence, there is no direct effect on such energy production related to implementation of this proposal. In fact, as previously mentioned in this preamble, there will be an increase in energy consumption, and hence an increase in energy production, resulting from installation of RTO and WESP likely needed for sources to meet the requirements of the final rule. This increase in energy consumption is equal to 718 GWh/yr for electricity and 45 million m^3/yr (1.6 billion ft^3/yr) for natural gas. These increases are equivalent to 0.012 percent of 1998 U.S. electricity production and 0.000001 percent of 1998 U.S. natural gas production.[9] It should be noted, however, that the reduction in demand for product output from these industries may lead to a negative indirect effect on such energy production, for the output reduction will lead to less energy use by these industries and thus some reduction in overall energy production.

For fuel production, the result of this indirect effect from reduced product output is a reduction of only about 1 barrel per day nationwide, or a 0.00001 percent reduction nationwide based on 1998 U.S. fuel production data.[10] For coal production, the resulting indirect effect from reduced product output is a reduction of only 2,000 tons per year nationwide, or only a 0.00001 percent reduction nationwide based on 1998 U.S. coal production data. For electricity production, the resulting indirect effect from reduced product output is a reduction of 42.8 GWh/yr, or only a 0.00013 percent reduction nationwide based on 1998 U.S. electricity production data. Given that the estimated price increase for product output from any of the affected industries is no more than 2.5 percent, there should be no price increase for any energy type by more than this amount. The cost of energy distribution should not be affected by the final rule at all since the rule does not affect energy distribution facilities. Finally, with changes in net exports being a minimal percentage of domestic output (0.01 percent) from the affected industries, there will be only a negligible change in international trade, and hence in dependence on foreign energy supplies. No other adverse outcomes are expected to occur with regards to energy supplies. Thus, the net effect of the final rule on energy

[9] U.S. Department of Energy, Energy Information Administration. Annual Energy Review, End-Use Energy Consumption for 1998. Located on the Internet at *http://www.eia.doe.gov/emeu/aer/enduse.html.*

[10] Ibid.

production is an increase in electricity output of 0.012 percent compared to 1998 output data, and a negligible change in output of other energy types. All of the results presented above account for the passthrough of costs to consumers, as well as the cost impact to producers. These results also account for how energy use is related to product output for the affected industries.[11] For more information on the estimated energy effects, please refer to the background memo [12] to these calculations and the economic impact analysis for the final rule. The background memo and economic impact analysis are available in the public docket.

The impacts from consideration of a low-risk subcategory are a reduction in all of the energy impacts listed above. For fuel production, the result of this indirect effect from reduced product output is a reduction of only about 0.6 barrel per day nationwide, or a 0.000007 percent reduction nationwide based on 1998 U.S. fuel production data.[13] This is a 0.4 barrel smaller reduction than that estimated for the final rule. For coal production, the resulting indirect effect from reduced product output is a reduction of only 950 tons per year nationwide, or only a 0.0000044 percent reduction nationwide based on 1998 U.S. coal production data. This is a smaller reduction than that estimated for the final rule by 1,050 tons per year. For electricity production, the resulting indirect effect from reduced product output is a reduction of 20.7 million kWh/yr, or only a 0.00006 percent reduction nationwide based on 1998 U.S. electricity production data. This is a smaller output reduction than that estimated for the final rule by 22.1 million kWh/yr. Given that the estimated price increase for product output from any of the affected industries is no more than 2.5 percent, there should be no price increase for any energy type by more than this amount. The cost of energy distribution should not be affected by the final rule at all since the rule does not affect energy distribution facilities. Finally, with changes in net exports being a minimal percentage of domestic output (0.006 percent, or practically the same as that for the final rule) from the affected industries, there will be only a negligible change in international trade, and hence in dependence on foreign energy supplies. No other adverse outcomes are expected to occur with regards to energy supplies. Thus, the net effect on energy production if facilities are eligible for the low-risk source category is an increase in electricity output of 0.008 percent compared to 1998 output data, and a negligible change in output of other energy types. This is a 0.004 percent smaller increase in electricity output compared to the impact of the final rule. All of the results presented above account for the passthrough of costs to consumers, as well as the cost impact to producers. These results also account for how energy use is related to product output for the affected industries.[14]

Therefore, we conclude that the final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rulemaking involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 25A, and 29 in 40 CFR part 60, appendix A; 204 and 204A through F in 40 CFR part 51, appendix M; 308, 316, and 320 in 40 CFR part 63, appendix A; EPA Method 0011 in EPA publication no. SW 846 (''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'') for formaldehyde; and two NCASI methods: NCASI Method CI/WP–98.01 (1998), ''Chilled Impinger Method For Use At Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol,'' and NCASI Method IM/CAN/WP–99.02 (2003), ''Impinger/Canister Source Sampling Method For Selected HAPs and Other Compounds at Wood Products Facilities.''

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods/performance specifications. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through 204F, 308, and 316. The search and review results have been documented and are placed in Docket numbers OAR–2003–0048 and A–98–44 for the final rule.

One voluntary consensus standard was identified as an acceptable alternative to EPA test methods for the purposes of the final rule. The voluntary consensus standard ASTM D6348–03, ''Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy,'' is an acceptable alternative to EPA Method 320 provided that the percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent. Also, the moisture determination in ASTM D6348–03 is an acceptable alternative to the measurement of moisture using EPA Method 4.

In addition to the voluntary consensus standards the EPA uses in the final rule, the search for emissions measurement procedures identified 13 other voluntary consensus standards. The EPA determined that 11 of those 13 voluntary consensus standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the rule were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt those standards for that purpose. (See Dockets A–44–98 and OAR–2003–0048 for the reasons for the determination for the 11 methods.)

Table 4 to subpart DDDD of 40 CFR part 63 lists the EPA testing methods included in the regulation. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

[11] U.S. Department of Energy, Energy Information Administration. 1998 Manufacturing Energy Consumption Survey. Located on the Internet at *http://www.eia.doe.gov/emeu/mecs/mecs98/datatables/contents.html.*

[12] U.S. Environmental Protection Agency. ''Energy Impact Analysis of the Proposed Plywood and Composite Wood Products NESHAP.'' July 30, 2001.

[13] Ibid.

[14] U.S. Department of Energy, Energy Information Administration. 1998 Manufacturing Energy Consumption Survey. Located on the Internet at *http://www.eia.doe.gov/emeu/mecs/mecs98/datatables/contents.html.*

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective September 28, 2004.

List of Subjects

40 CFR Part 63

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

40 CFR Part 429

Environmental protection, Forests and forest products, Furniture industry, Waste treatment and disposal, Water pollution control.

Dated: February 26, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, 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.*

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding paragraph (b)(54) and revising paragraph (f) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(54) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, incorporation by reference (IBR) approved for Table 4 to Subpart DDDD of this part and Appendix B to subpart DDDD of this part as specified in the subpart.

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(f) The following material is available from the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), P.O. Box 133318, Research Triangle Park, NC 27709–3318 or at *http://www.ncasi.org.*

(1) NCASI Method DI/MEOH–94.02, Methanol in Process Liquids GC/FID (Gas Chromatography/Flame Ionization Detection), August 1998, Methods Manual, NCASI, Research Triangle Park, NC, IBR approved for § 63.457(c)(3)(ii) of subpart S of this part.

(2) NCASI Method CI/WP–98.01, Chilled Impinger Method For Use At Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol, 1998, Methods Manual, NCASI, Research Triangle Park, NC, IBR approved for Table 4 to Subpart DDDD of this part.

(3) NCASI Method IM/CAN/WP–99.02, Impinger/Canister Source Sampling Method For Selected HAPs and Other Compounds at Wood Products Facilities, January 2004, Methods Manual, NCASI, Research Triangle Park, NC, IBR approved for Table 4 to Subpart DDDD of this part and Appendix B to subpart DDDD of this part.

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■ 3. Part 63 is amended by adding subpart DDDD to read as follows:

Subpart DDDD—National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

Sec.

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What This Subpart Covers

§ 63.2230 What is the purpose of this subpart?

This subpart establishes national compliance options, operating requirements, and work practice requirements for hazardous air pollutants (HAP) emitted from plywood and composite wood products (PCWP) manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the compliance options, operating requirements, and work practice requirements.

§ 63.2231 Does this subpart apply to me?

This subpart applies to you if you meet the criteria in paragraphs (a) and (b) of this section, except for facilities that the Environmental Protection Agency (EPA) determines are part of the low-risk subcategory of PCWP manufacturing facilities as specified in appendix B to this subpart.

(a) You own or operate a PCWP manufacturing facility. A PCWP manufacturing facility is a facility that manufactures plywood and/or composite wood products by bonding wood material (fibers, particles, strands, veneers, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include, but are not limited to, plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

(b) The PCWP manufacturing facility is located at a major source of HAP emissions. A major source of HAP emissions is any stationary source or group of stationary sources 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 (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.2232 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at a PCWP manufacturing facility.

(b) The affected source is the collection of dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products. The affected source includes, but is not limited to, green end operations, refining, drying operations, resin preparation, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other National Emission Standards for Hazardous Air Pollutants (NESHAP)). The affected source also includes onsite storage and preparation of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (§ 63.2292). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

(c) An affected source is a new affected source if you commenced construction of the affected source after January 9, 2003, and you meet the applicability criteria at the time you commenced construction.

(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.

§ 63.2233 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraph (a)(1) or (2) of this section, whichever is applicable.

(1) If the initial startup of your affected source is before September 28, 2004, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart no later than September 28, 2004.

(2) If the initial startup of your affected source is after September 28, 2004, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the compliance options, operating requirements, and work practice requirements for existing sources no later than October 1, 2007.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart by October 1, 2007 or upon initial startup of your affected source as a major source, whichever is later.

(d) You must meet the notification requirements according to the schedule in § 63.2280 and according to 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the compliance options, operating requirements, and work practice requirements in this subpart.

Compliance Options, Operating Requirements, and Work Practice Requirements

§ 63.2240 What are the compliance options and operating requirements and how must I meet them?

You must meet the compliance options and operating requirements described in Tables 1A, 1B, and 2 to this subpart and in paragraph (c) of this section by using one or more of the compliance options listed in paragraphs (a), (b), and (c) of this section. The process units subject to the compliance options are listed in Tables 1A and 1B to this subpart and are defined in § 63.2292. You need only to meet one of the compliance options outlined in paragraphs (a) through (c) of this section for each process unit. You cannot combine compliance options in paragraph (a), (b), or (c) for a single process unit. (For example, you cannot use a production-based compliance option in paragraph (a) for one vent of a veneer dryer and an add-on control system compliance option in paragraph (b) for another vent on the same veneer dryer. You must use either the production-based compliance option or an add-on control system compliance option for the entire dryer.)

(a) *Production-based compliance options.* You must meet the production-based total HAP compliance options in Table 1A to this subpart and the applicable operating requirements in Table 2 to this subpart. You may not use an add-on control system or wet control

device to meet the production-based compliance options.

(b) *Compliance options for add-on control systems.* You must use an emissions control system and demonstrate that the resulting emissions meet the compliance options and operating requirements in Tables 1B and 2 to this subpart. If you own or operate a reconstituted wood product press at a new or existing affected source or a reconstituted wood product board cooler at a new affected source, and you choose to comply with one of the concentration-based compliance options for a control system outlet (presented as option numbers 2, 4, and 6 in Table 1B to this subpart), you must have a capture device that either meets the definition of wood products enclosure in § 63.2292 or achieves a capture efficiency of greater than or equal to 95 percent.

(c) *Emissions averaging compliance option (for existing sources only).* Using the procedures in paragraphs (c)(1) through (3) of this section, you must demonstrate that emissions included in the emissions average meet the compliance options and operating requirements. New sources may not use emissions averaging to comply with this subpart.

(1) *Calculation of required and actual mass removal.* Limit emissions of total HAP, as defined in § 63.2292, to include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde from your affected source to the standard specified by Equations 1, 2, and 3 of this section.

$$RMR = 0.90 \times \left(\sum_{i=1}^{n} UCEP_i \times OH_i \right) \quad \text{(Eq. 1)}$$

$$AMR = \left(\sum_{i=1}^{n} CD_i \times OCEP_i \times OH_i \right) \quad \text{(Eq. 2)}$$

$$AMR \geq RMR \quad \text{(Eq. 3)}$$

Where:

RMR = required mass removal of total HAP from all process units generating debits (*i.e.,* all process units that are subject to the compliance options in Tables 1A and 1B to this subpart and that are either uncontrolled or under-controlled), pounds per semiannual period;

AMR = actual mass removal of total HAP from all process units generating credits (*i.e.,* all process units that are controlled as part of the Emissions Averaging Plan including credits from debit-generating process units that are under-controlled), pounds per semiannual period;

$UCEP_i$ = mass of total HAP from an uncontrolled or under-controlled process unit (i) that generates debits, pounds per hour;

OH_i = number of hours a process unit (i) is operated during the semiannual period, hours per 6-month period;

CD_i = control system efficiency for the emission point (i) for total HAP, expressed as a fraction, and not to exceed 90 percent, unitless (Note: To calculate the control system efficiency of biological treatment units that do not meet the definition of biofilter in § 63.2292, you must use 40 CFR part 63, appendix C, Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.);

$OCEP_i$ = mass of total HAP from a process unit (i) that generates credits (including credits from debit-generating process units that are under-controlled), pounds per hour;

0.90 = required control system efficiency of 90 percent multiplied, unitless.

(2) *Requirements for debits and credits.* You must calculate debits and credits as specified in paragraphs (c)(2)(i) through (vi) of this section.

(i) You must limit process units in the emissions average to those process units located at the existing affected source as defined in § 63.2292.

(ii) You cannot use nonoperating process units to generate emissions averaging credits. You cannot use process units that are shut down to generate emissions averaging debits or credits.

(iii) You may not include in your emissions average process units controlled to comply with a State, Tribal, or Federal rule other than this subpart.

(iv) You must use actual measurements of total HAP emissions from process units to calculate your required mass removal (RMR) and actual mass removal (AMR). The total HAP measurements must be obtained according to § 63.2262(b) through (d), (g), and (h), using the methods specified in Table 4 to this subpart.

(v) Your initial demonstration that the credit-generating process units will be capable of generating enough credits to offset the debits from the debit-generating process units must be made under representative operating conditions. After the compliance date, you must use actual operating data for all debit and credit calculations.

(vi) Do not include emissions from the following time periods in your emissions averaging calculations:

(A) Emissions during periods of startup, shutdown, and malfunction as described in the startup, shutdown, and malfunction plan (SSMP).

(B) Emissions during periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities or during periods of control device maintenance covered in your routine control device maintenance exemption. No credits may be assigned to credit-generating process units, and maximum debits must be assigned to debit-generating process units during these periods.

(3) *Operating requirements.* You must meet the operating requirements in Table 2 to this subpart for each process unit or control device used in calculation of emissions averaging credits.

§ 63.2241 What are the work practice requirements and how must I meet them?

(a) You must meet each work practice requirement in Table 3 to this subpart that applies to you.

(b) As provided in § 63.6(g), we, the EPA, may choose to grant you permission to use an alternative to the work practice requirements in this section.

(c) If you have a dry rotary dryer, you may choose to designate your dry rotary dryer as a green rotary dryer and meet the more stringent compliance options and operating requirements in § 63.2240 for green rotary dryers instead of the work practices for dry rotary dryers. If you have a hardwood veneer dryer or veneer redryer, you may choose to designate your hardwood veneer dryer or veneer redryer as a softwood veneer dryer and meet the more stringent compliance options and operating requirements in § 63.2240 for softwood veneer dryer heated zones instead of the work practices for hardwood veneer dryers or veneer redryers.

General Compliance Requirements

§ 63.2250 What are the general requirements?

(a) You must be in compliance with the compliance options, operating requirements, and the work practice requirements in this subpart at all times, except during periods of process unit or control device startup, shutdown, and malfunction; prior to process unit initial startup; and during the routine control device maintenance exemption specified in § 63.2251. The compliance options, operating requirements, and

work practice requirements do not apply during times when the process unit(s) subject to the compliance options, operating requirements, and work practice requirements are not operating, or during scheduled startup and shutdown periods, and during malfunctions. These startup and shutdown periods must not exceed the minimum amount of time necessary for these events.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written SSMP according to the provisions in § 63.6(e)(3).

(d) Shutoff of direct-fired burners resulting from partial and full production stoppages of direct-fired softwood veneer dryers or over-temperature events shall be deemed shutdowns and not malfunctions. Lighting or re-lighting any one or all gas burners in direct-fired softwood veneer dryers shall be deemed startups and not malfunctions.

§ 63.2251 What are the requirements for the routine control device maintenance exemption?

(a) You may request a routine control device maintenance exemption from the EPA Administrator for routine maintenance events such as control device bakeouts, washouts, media replacement, and replacement of corroded parts. Your request must justify the need for the routine maintenance on the control device and the time required to accomplish the maintenance activities, describe the maintenance activities and the frequency of the maintenance activities, explain why the maintenance cannot be accomplished during process shutdowns, describe how you plan to make reasonable efforts to minimize emissions during the maintenance, and provide any other documentation required by the EPA Administrator.

(b) The routine control device maintenance exemption must not exceed the percentages of process unit operating uptime in paragraphs (b)(1) and (2) of this section.

(1) If the control device is used to control a green rotary dryer, tube dryer, rotary strand dryer, or pressurized refiner, then the routine control device maintenance exemption must not exceed 3 percent of annual operating uptime for each process unit controlled.

(2) If the control device is used to control a softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, conveyor strand dryer, or fiberboard mat dryer, then the routine control device maintenance exemption must not exceed 0.5 percent of annual operating uptime for each process unit controlled.

(3) If the control device is used to control a combination of equipment listed in both paragraphs (b)(1) and (2) of this section, such as a tube dryer and a reconstituted wood product press, then the routine control device maintenance exemption must not exceed 3 percent of annual operating uptime for each process unit controlled.

(c) The request for the routine control device maintenance exemption, if approved by the EPA Administrator, must be IBR in and attached to the affected source's title V permit.

(d) The compliance options and operating requirements do not apply during times when control device maintenance covered under your approved routine control device maintenance exemption is performed. You must minimize emissions to the greatest extent possible during these routine control device maintenance periods.

(e) To the extent practical, startup and shutdown of emission control systems must be scheduled during times when process equipment is also shut down.

Initial Compliance Requirements

§ 63.2260 How do I demonstrate initial compliance with the compliance options, operating requirements, and work practice requirements?

(a) To demonstrate initial compliance with the compliance options and operating requirements, you must conduct performance tests and establish each site-specific operating requirement in Table 2 to this subpart according to the requirements in § 63.2262 and Table 4 to this subpart. Combustion units that accept process exhausts into the flame zone are exempt from the initial performance testing and operating requirements for thermal oxidizers.

(b) You must demonstrate initial compliance with each compliance option, operating requirement, and work practice requirement that applies to you according to Tables 5 and 6 to this subpart and according to §§ 63.2260 through 63.2269 of this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.2280(d).

§ 63.2261 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct performance tests upon initial startup or no later than 180 calendar days after the compliance date that is specified for your source in § 63.2233 and according to § 63.7(a)(2), whichever is later.

(b) You must conduct initial compliance demonstrations that do not require performance tests upon initial startup or no later than 30 calendar days after the compliance date that is specified for your source in § 63.2233, whichever is later.

§ 63.2262 How do I conduct performance tests and establish operating requirements?

(a) You must conduct each performance test according to the requirements in § 63.7(e)(1), the requirements in paragraphs (b) through (o) of this section, and according to the methods specified in Table 4 to this subpart.

(b) *Periods when performance tests must be conducted.* (1) You must not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(2) You must test under representative operating conditions as defined in § 63.2292. You must describe representative operating conditions in your performance test report for the process and control systems and explain why they are representative.

(c) *Number of test runs.* You must conduct three separate test runs for each performance test required in this section as specified in § 63.7(e)(3). Each test run must last at least 1 hour except for: testing of a temporary total enclosure (TTE) conducted using Methods 204A through 204F of 40 CFR part 51, appendix M, which require three separate test runs of at least 3 hours each; and testing of an enclosure conducted using the alternative tracer gas method in appendix A to this subpart, which requires a minimum of three separate runs of at least 20 minutes each.

(d) *Location of sampling sites.* (1) Sampling sites must be located at the inlet (if emission reduction testing or documentation of inlet methanol or formaldehyde concentration is required) and outlet of the control device and prior to any releases to the atmosphere. For HAP-altering controls in sequence, such as a wet control device followed by a thermal oxidizer, sampling sites must be located at the functional inlet of the control sequence (*e.g.*, prior to the wet control device) and at the outlet of the control sequence (*e.g.*, thermal oxidizer

outlet) and prior to any releases to the atmosphere.

(2) Sampling sites for process units meeting compliance options without a control device must be located prior to any releases to the atmosphere. Facilities demonstrating compliance with a production-based compliance option for a process unit equipped with a wet control device must locate sampling sites prior to the wet control device.

(e) *Collection of monitoring data.* You must collect operating parameter monitoring system or continuous emissions monitoring system (CEMS) data at least every 15 minutes during the entire performance test and determine the parameter or concentration value for the operating requirement during the performance test using the methods specified in paragraphs (k) through (o) of this section.

(f) *Collection of production data.* To comply with any of the production-based compliance options, you must measure and record the process unit throughput during each performance test.

(g) *Nondetect data.* (1) Except as specified in paragraph (g)(2) of this section, all nondetect data (§ 63.2292) must be treated as one-half of the method detection limit when determining total HAP, formaldehyde, methanol, or total hydrocarbon (THC) emission rates.

(2) When showing compliance with the production-based compliance options in Table 1A to this subpart, you may treat emissions of an individual HAP as zero if all three of the performance test runs result in a nondetect measurement, and the method detection limit is less than or equal to 1 parts per million by volume, dry basis (ppmvd). Otherwise, nondetect data for individual HAP must be treated as one-half of the method detection limit.

(h) *Calculation of percent reduction across a control system.* When determining the control system efficiency for any control system included in your emissions averaging plan (not to exceed 90 percent) and when complying with any of the compliance options based on percent reduction across a control system in Table 1B to this subpart, as part of the performance test, you must calculate the percent reduction using Equation 1 of this section:

$$PR = CE \times \frac{ER_{in} - ER_{out}}{ER_{in}}(100) \qquad \text{(Eq. 1)}$$

Where:

PR = percent reduction, percent;

CE = capture efficiency, percent (determined for reconstituted wood product presses and board coolers as required in Table 4 to this subpart);

ER_{in} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde), THC, formaldehyde, or methanol in the inlet vent stream of the control device, pounds per hour;

ER_{out} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde), THC, formaldehyde, or methanol in the outlet vent stream of the control device, pounds per hour.

(i) *Calculation of mass per unit production.* To comply with any of the production-based compliance options in Table 1A to this subpart, you must calculate your mass per unit production emissions for each performance test run using Equation 2 of this section:

$$MP = \frac{ER_{HAP}}{P \times CE} \qquad \text{(Eq. 2)}$$

Where:

MP = mass per unit production, pounds per oven dried ton OR pounds per thousand square feet on a specified thickness basis (see paragraph (j) of this section if you need to convert from one thickness basis to another);

ER_{HAP} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde) in the stack, pounds per hour;

P = process unit production rate (throughput), oven dried tons per hour OR thousand square feet per hour on a specified thickness basis;

CE = capture efficiency, percent (determined for reconstituted wood product presses and board coolers as required in Table 4 to this subpart).

(j) *Thickness basis conversion.* Use Equation 3 of this section to convert from one thickness basis to another:

$$MSF_B = MSF_A \times \frac{A}{B} \qquad \text{(Eq. 3)}$$

Where:

MSF_A = thousand square feet on an A-inch basis;

MSF_B = thousand square feet on a B-inch basis;

A = old thickness you are converting from, inches;

B = new thickness you are converting to, inches.

(k) *Establishing thermal oxidizer operating requirements.* If you operate a thermal oxidizer, you must establish your thermal oxidizer operating parameters according to paragraphs (k)(1) through (3) of this section.

(1) During the performance test, you must continuously monitor the firebox temperature during each of the required 1-hour test runs. For regenerative thermal oxidizers, you may measure the temperature in multiple locations (*e.g.*, one location per burner) in the combustion chamber and calculate the average of the temperature measurements prior to reducing the temperature data to 15-minute averages for purposes of establishing your minimum firebox temperature. The minimum firebox temperature must then be established as the average of the three minimum 15-minute firebox temperatures monitored during the three test runs. Multiple three-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) You may establish a different minimum firebox temperature for your thermal oxidizer by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (k)(1) of this section that demonstrates compliance with the applicable compliance options of this subpart.

(3) If your thermal oxidizer is a combustion unit that accepts process exhaust into the flame zone, then you are exempt from the performance testing and monitoring requirements specified in paragraphs (k)(1) and (2) of this section. To demonstrate initial compliance, you must submit documentation with your Notification of Compliance Status showing that process exhausts controlled by the combustion unit enter into the flame zone.

(l) *Establishing catalytic oxidizer operating requirements.* If you operate a catalytic oxidizer, you must establish your catalytic oxidizer operating parameters according to paragraphs (l)(1) and (2) of this section.

(1) During the performance test, you must continuously monitor during the required 1-hour test runs either the temperature at the inlet to each catalyst bed or the temperature in the combustion chamber. For regenerative catalytic oxidizers, you must calculate the average of the temperature measurements from each catalyst bed inlet or within the combustion chamber prior to reducing the temperature data to 15-minute averages for purposes of

establishing your minimum catalytic oxidizer temperature. The minimum catalytic oxidizer temperature must then be established as the average of the three minimum 15-minute temperatures monitored during the three test runs. Multiple three-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) You may establish a different minimum catalytic oxidizer temperature by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraphs (l)(1) and (2) of this section that demonstrates compliance with the applicable compliance options of this subpart.

(m) *Establishing biofilter operating requirements.* If you operate a biofilter, you must establish your biofilter operating requirements according to paragraphs (m)(1) through (3) of this section.

(1) During the performance test, you must continuously monitor the biofilter bed temperature during each of the required 1-hour test runs. To monitor biofilter bed temperature, you may use multiple thermocouples in representative locations throughout the biofilter bed and calculate the average biofilter bed temperature across these thermocouples prior to reducing the temperature data to 15-minute averages for purposes of establishing biofilter bed temperature limits. The biofilter bed temperature range must be established as the minimum and maximum 15-minute biofilter bed temperatures monitored during the three test runs. You may base your biofilter bed temperature range on values recorded during previous performance tests provided that the data used to establish the temperature ranges have been obtained using the test methods required in this subpart. If you use data from previous performance tests, you must certify that the biofilter and associated process unit(s) have not been modified subsequent to the date of the performance tests. Replacement of the biofilter media with the same type of material is not considered a modification of the biofilter for purposes of this section.

(2) For a new biofilter installation, you will be allowed up to 180 days following the compliance date or 180 days following initial startup of the biofilter to complete the requirements in paragraph (m)(1) of this section.

(3) You may expand your biofilter bed temperature operating range by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (m)(1) of this section that demonstrates compliance with the applicable compliance options of this subpart.

(n) *Establishing operating requirements for process units meeting compliance options without a control device.* If you operate a process unit that meets a compliance option in Table 1A to this subpart, or is a process unit that generates debits in an emissions average without the use of a control device, you must establish your process unit operating parameters according to paragraphs (n)(1) through (2) of this section.

(1) During the performance test, you must identify and document the process unit controlling parameter(s) that affect total HAP emissions during the three-run performance test. The controlling parameters you identify must coincide with the representative operating conditions you describe according to § 63.2262(b)(2). For each parameter, you must specify appropriate monitoring methods, monitoring frequencies, and for continuously monitored parameters, averaging times not to exceed 24 hours. The operating limit for each controlling parameter must then be established as the minimum, maximum, range, or average (as appropriate depending on the parameter) recorded during the performance test. Multiple three-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) You may establish different controlling parameter limits for your process unit by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (n)(1) of this section that demonstrates compliance with the compliance options in Table 1A to this subpart or is used to establish emission averaging debits for an uncontrolled process unit.

(o) *Establishing operating requirements using THC CEMS.* If you choose to meet the operating requirements by monitoring THC concentration instead of monitoring control device or process operating parameters, you must establish your THC concentration operating requirement according to paragraphs (o)(1) through (2) of this section.

(1) During the performance test, you must continuously monitor THC concentration using your CEMS during each of the required 1-hour test runs. The maximum THC concentration must then be established as the average of the three maximum 15-minute THC concentrations monitored during the three test runs. Multiple three-run performance tests may be conducted to establish a range of THC concentration values under different operating conditions.

(2) You may establish a different maximum THC concentration by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (o)(1) of this section that demonstrates compliance with the compliance options in Tables 1A and 1B to this subpart.

§ 63.2263 Initial compliance demonstration for a dry rotary dryer.

If you operate a dry rotary dryer, you must demonstrate that your dryer processes furnish with an inlet moisture content of less than or equal to 30 percent (by weight, dry basis) and operates with a dryer inlet temperature of less than or equal to 600°F. You must designate and clearly identify each dry rotary dryer. You must record the inlet furnish moisture content (dry basis) and inlet dryer operating temperature according to § 63.2269(a), (b), and (c) and § 63.2270 for a minimum of 30 calendar days. You must submit the highest recorded 24-hour average inlet furnish moisture content and the highest recorded 24-hour average dryer inlet temperature with your Notification of Compliance Status. In addition, you must submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the dry rotary dryer will dry furnish with a maximum inlet moisture content less than or equal to 30 percent (by weight, dry basis) and will operate with a maximum inlet temperature of less than or equal to 600°F in the future.

§ 63.2264 Initial compliance demonstration for a hardwood veneer dryer.

If you operate a hardwood veneer dryer, you must record the annual volume percentage of softwood veneer species processed in the dryer as follows:

(a) Use Equation 1 of this section to calculate the annual volume percentage of softwood species dried:

$$SW_{\%} = \frac{SW}{T}\ (100) \qquad \text{(Eq. 1)}$$

Where:

$SW_{\%}$ = annual volume percent softwood species dried;

SW = softwood veneer dried during the previous 12 months, thousand square feet (3/8-inch basis);

T = total softwood and hardwood veneer dried during the previous 12 months, thousand square feet (3/8-inch basis).

(b) You must designate and clearly identify each hardwood veneer dryer. Submit with the Notification of Compliance Status the annual volume percentage of softwood species dried in the dryer based on your dryer production for the 12 months prior to the compliance date specified for your source in § 63.2233. If you did not dry any softwood species in the dryer during the 12 months prior to the compliance date, then you need only to submit a statement indicating that no softwood species were dried. In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the veneer dryer will be used to process less than 30 volume percent softwood species in the future.

§ 63.2265 Initial compliance demonstration for a softwood veneer dryer.

If you operate a softwood veneer dryer, you must develop a plan for review and approval for minimizing fugitive emissions from the veneer dryer heated zones, and you must submit the plan with your Notification of Compliance Status.

§ 63.2266 Initial compliance demonstration for a veneer redryer.

If you operate a veneer redryer, you must record the inlet moisture content of the veneer processed in the redryer according to § 63.2269(a) and (c) and § 63.2270 for a minimum of 30 calendar days. You must designate and clearly identify each veneer redryer. You must submit the highest recorded 24-hour average inlet veneer moisture content with your Notification of Compliance Status to show that your veneer redryer processes veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis). In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the veneer redryer will dry veneer with a moisture content less than 25 percent (by weight, dry basis) in the future.

§ 63.2267 Initial compliance demonstration for a reconstituted wood product press or board cooler.

If you operate a reconstituted wood product press at a new or existing affected source or a reconstituted wood product board cooler at a new affected source, then you must either use a wood products enclosure as defined in § 63.2292 or measure the capture efficiency of the capture device for the press or board cooler using Methods 204 and 204A through 204F of 40 CFR part 51, appendix M (as appropriate), or using the alternative tracer gas method contained in appendix A to this subpart. You must submit documentation that the wood products enclosure meets the press enclosure design criteria in § 63.2292 or the results of the capture efficiency verification with your Notification of Compliance Status.

§ 63.2268 Initial compliance demonstration for a wet control device.

If you use a wet control device as the sole means of reducing HAP emissions, you must develop and implement a plan for review and approval to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere such that the desired emissions reductions are obtained. You must submit the plan with your Notification of Compliance Status.

§ 63.2269 What are my monitoring installation, operation, and maintenance requirements?

(a) *General continuous parameter monitoring requirements.* You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to paragraphs (a)(1) through (3) of this section.

(1) The CPMS must be capable of completing a minimum of one cycle of operation (sampling, analyzing, and recording) for each successive 15-minute period.

(2) At all times, you must maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(3) Record the results of each inspection, calibration, and validation check.

(b) *Temperature monitoring.* For each temperature monitoring device, you must meet the requirements in paragraphs (a) and (b)(1) through (6) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) Use a temperature sensor with a minimum accuracy of 4°F or 0.75 percent of the temperature value, whichever is larger.

(3) If a chart recorder is used, it must have a sensitivity with minor divisions not more than 20°F.

(4) 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°F of the process temperature sensor's reading.

(5) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(6) At least quarterly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) *Wood moisture monitoring.* For each furnish or veneer moisture meter, you must meet the requirements in paragraphs (a)(1), (2), (4) and (5) and paragraphs (c)(1) through (4) of this section.

(1) For dry rotary dryers, use a continuous moisture monitor with a minimum accuracy of 1 percent (dry basis) moisture or better in the 25 to 35 percent (dry basis) moisture content range. For veneer redryers, use a continuous moisture monitor with a minimum accuracy of 3 percent (dry basis) moisture or better in the 15 to 25 percent (dry basis) moisture content range. Alternatively, you may use a continuous moisture monitor with a minimum accuracy of 5 percent (dry basis) moisture or better for dry rotary dryers used to dry furnish with less than 25 percent (dry basis) moisture or for veneer redryers used to redry veneer with less than 20 percent (dry basis) moisture.

(2) Locate the moisture monitor in a position that provides a representative measure of furnish or veneer moisture.

(3) Calibrate the moisture monitor based on the procedures specified by the moisture monitor manufacturer at least once per semiannual compliance period (or more frequently if recommended by the moisture monitor manufacturer).

(4) At least quarterly, inspect all components of the moisture monitor for integrity and all electrical connections for continuity.

(5) Use Equation 1 of this section to convert percent moisture measurements wet basis to a dry basis:

$$MC_{dry} = \frac{MC_{wet}/100}{1-\left(MC_{wet}/100\right)}(100) \qquad \text{(Eq. 1)}$$

Where:

MC_{dry} = percent moisture content of wood material (weight percent, dry basis);

MC_{wet} = percent moisture content of wood material (weight percent, wet basis).

(d) *Continuous emission monitoring system(s).* Each CEMS must be installed, operated, and maintained according to

paragraphs (d)(1) through (4) of this section.

(1) Each CEMS for monitoring THC concentration must be installed, operated, and maintained according to Performance Specification 8 of 40 CFR part 60, appendix B. You must also comply with Procedure 1 of 40 CFR part 60, appendix F.

(2) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8 and according to Performance Specification 8 of 40 CFR part 60, appendix B.

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) The CEMS data must be reduced as specified in § 63.8(g)(2) and § 63.2270(d) and (e).

Continuous Compliance Requirements

§ 63.2270 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for, as appropriate, monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must conduct all monitoring in continuous operation at all times that the process unit is operating. For purposes of calculating data averages, you must not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities. You must use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities; data recorded during periods of startup, shutdown, and malfunction; or data recorded during periods of control device downtime covered in any approved routine control device maintenance exemption in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control system.

(d) Except as provided in paragraph (e) of this section, determine the 3-hour block average of all recorded readings, calculated after every 3 hours of operation as the average of the evenly spaced recorded readings in the previous 3 operating hours (excluding periods described in paragraphs (b) and (c) of this section).

(e) For dry rotary dryer and veneer redryer wood moisture monitoring, dry rotary dryer temperature monitoring, biofilter bed temperature monitoring, and biofilter outlet THC monitoring, determine the 24-hour block average of all recorded readings, calculated after every 24 hours of operation as the average of the evenly spaced recorded readings in the previous 24 operating hours (excluding periods described in paragraphs (b) and (c) of this section).

(f) To calculate the data averages for each 3-hour or 24-hour averaging period, you must have at least 75 percent of the required recorded readings for that period using only recorded readings that are based on valid data (*i.e.*, not from periods described in paragraphs (b) and (c) of this section).

§ 63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

(a) You must demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements in §§ 63.2240 and 63.2241 that apply to you according to the methods specified in Tables 7 and 8 to this subpart.

(b) You must report each instance in which you did not meet each compliance option, operating requirement, and work practice requirement in Tables 7 and 8 to this subpart that applies to you. This includes periods of startup, shutdown, and malfunction and periods of control device maintenance specified in paragraphs (b)(1) through (3) of this section. These instances are deviations from the compliance options, operating requirements, and work practice requirements in this subpart. These deviations must be reported according to the requirements in § 63.2281.

(1) During periods of startup, shutdown, and malfunction, you must operate in accordance with the SSMP.

(2) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the EPA Administrator's satisfaction that you were operating in accordance with the SSMP. The EPA Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(3) Deviations that occur during periods of control device maintenance covered by any approved routine control device maintenance exemption are not violations if you demonstrate to the EPA Administrator's satisfaction that you were operating in accordance with the approved routine control device maintenance exemption.

Notifications, Reports, and Records

§ 63.2280 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (f)(6), 63.9 (b) through (e), and (g) and (h) by the dates specified.

(b) You must submit an Initial Notification no later than 120 calendar days after September 28, 2004, or after initial startup, whichever is later, as specified in § 63.9(b)(2).

(c) If you are required to conduct a performance test, you must submit a written notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as specified in § 63.7(b)(1).

(d) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 4, 5, and 6 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Table 5 or 6 to this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 5 and 6 to this subpart that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(e) If you request a routine control device maintenance exemption

according to § 63.2251, you must submit your request for the exemption no later than 30 days before the compliance date.

(f) If you use the emissions averaging compliance option in § 63.2240(c), you must submit an Emissions Averaging Plan to the EPA Administrator for approval no later than 1 year before the compliance date or no later than 1 year before the date you would begin using an emissions average, whichever is later. The Emissions Averaging Plan must include the information in paragraphs (f)(1) through (6) of this section.

(1) Identification of all the process units to be included in the emissions average indicating which process units will be used to generate credits, and which process units that are subject to compliance options in Tables 1A and 1B to this subpart will be uncontrolled (used to generate debits) or under-controlled (used to generate debits and credits).

(2) Description of the control system used to generate emission credits for each process unit used to generate credits.

(3) Determination of the total HAP control efficiency for the control system used to generate emission credits for each credit-generating process unit.

(4) Calculation of the RMR and AMR, as calculated using Equations 1 through 3 of § 63.2240(c)(1).

(5) Documentation of total HAP measurements made according to § 63.2240(c)(2)(iv) and other relevant documentation to support calculation of the RMR and AMR.

(6) A summary of the operating parameters you will monitor and monitoring methods for each debit-generating and credit-generating process unit.

(g) You must notify the EPA Administrator within 30 days before you take any of the actions specified in paragraphs (g)(1) through (3) of this section.

(1) You modify or replace the control system for any process unit subject to the compliance options and operating requirements in this subpart.

(2) You shut down any process unit included in your Emissions Averaging Plan.

(3) You change a continuous monitoring parameter or the value or range of values of a continuous monitoring parameter for any process unit or control device.

§ 63.2281 What reports must I submit and when?

(a) You must submit each report in Table 9 to this subpart that applies to you.

(b) Unless the EPA Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2233 ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for the semiannual reporting period ending on June 30 and December 31, respectively.

(5) 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 § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) A description of control device maintenance performed while the control device was offline and one or more of the process units controlled by the control device was operating, including the information specified in paragraphs (c)(5)(i) through (iii) of this section.

(i) The date and time when the control device was shut down and restarted.

(ii) Identification of the process units that were operating and the number of hours that each process unit operated while the control device was offline.

(iii) A statement of whether or not the control device maintenance was included in your approved routine control device maintenance exemption developed pursuant to § 63.2251. If the control device maintenance was included in your approved routine control device maintenance exemption, then you must report the information in paragraphs (c)(5)(iii)(A) through (C) of this section.

(A) The total amount of time that each process unit controlled by the control device operated during the semiannual compliance period and during the previous semiannual compliance period.

(B) The amount of time that each process unit controlled by the control device operated while the control device was down for maintenance covered under the routine control device maintenance exemption during the semiannual compliance period and during the previous semiannual compliance period.

(C) Based on the information recorded under paragraphs (c)(5)(iii)(A) and (B) of this section for each process unit, compute the annual percent of process unit operating uptime during which the control device was offline for routine maintenance using Equation 1 of this section.

$$RM = \frac{DT_p + DT_c}{PU_p + PU_c} \qquad \text{(Eq. 1)}$$

Where:

RM = Annual percentage of process unit uptime during which control device is down for routine control device maintenance;

PU_p = Process unit uptime for the previous semiannual compliance period;

PU_c = Process unit uptime for the current semiannual compliance period;

DT_p = Control device downtime claimed under the routine control device maintenance exemption for the previous semiannual compliance period;

DT_c = Control device downtime claimed under the routine control device maintenance exemption for the

current semiannual compliance period.

(6) The results of any performance tests conducted during the semiannual reporting period.

(7) If there are no deviations from any applicable compliance option or operating requirement, and there are no deviations from the requirements for work practice requirements in Table 8 to this subpart, a statement that there were no deviations from the compliance options, operating requirements, or work practice requirements during the reporting period.

(8) If there were no periods during which the continuous monitoring system (CMS), including CEMS and CPMS, was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from a compliance option or operating requirement and for each deviation from the work practice requirements in Table 8 to this subpart that occurs at an affected source where you are not using a CMS to comply with the compliance options, operating requirements, or work practice requirements in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (6) of this section and in paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from a compliance option or operating requirement occurring at an affected source where you are using a CMS to comply with the compliance options and operating requirements in this subpart, you must include the information in paragraphs (c)(1) through (6) and paragraphs (e)(1) through (11) of this section. This includes periods of startup, shutdown, and malfunction and routine control device maintenance.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction; during a period of control device maintenance covered in your approved routine control device maintenance exemption; or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control system problems, control device maintenance, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) A brief description of the process units.

(9) A brief description of the CMS.

(10) The date of the latest CMS certification or audit.

(11) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) If you comply with the emissions averaging compliance option in § 63.2240(c), you must include in your semiannual compliance report calculations based on operating data from the semiannual reporting period that demonstrate that actual mass removal equals or exceeds the required mass removal.

(g) 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 § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 9 to this subpart along with, or as part of, the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any compliance option, operating requirement, or work practice requirement in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

§ 63.2282 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Documentation of your approved routine control device maintenance exemption, if you request such an exemption under § 63.2251.

(4) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Tables 7 and 8 to this subpart to show continuous compliance with each compliance option, operating requirement, and work practice requirement that applies to you.

(c) For each CEMS, you must keep the following records.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (i.e., superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to relative accuracy testing for CEMS as required in § 63.8(f)(6)(i).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(d) If you comply with the emissions averaging compliance option in § 63.2240(c), you must keep records of all information required to calculate emission debits and credits.

(e) If you operate a catalytic oxidizer, you must keep records of annual catalyst activity checks and subsequent corrective actions.

§ 63.2283 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review as specified in § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each

occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.2290 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.2291 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. 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 has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 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 (5) of this section.

(1) Approval of alternatives to the compliance options, operating requirements, and work practice requirements in §§ 63.2240 and 63.2241 as specified in § 63.6(g). For the purposes of delegation authority under 40 CFR part 63, subpart E, ''compliance options'' represent ''emission limits''; ''operating requirements'' represent ''operating limits''; and ''work practice requirements'' represent ''work practice standards.''

(2) Approval of major alternatives to test methods as specified in § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring as specified in § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting as specified in § 63.10(f) and as defined in § 63.90.

(5) Approval of PCWP sources demonstrations of eligibility for the low-risk subcategory developed according to appendix B of this subpart.

§ 63.2292 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in 40 CFR 63.2, the General Provisions, and in this section as follows:

Affected source means the collection of dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products. The affected source includes, but is not limited to, green end operations, refining, drying operations, resin preparation, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other NESHAP). The affected source also includes onsite storage of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (defined elsewhere in this section). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

Agricultural fiber means the fiber of an annual agricultural crop. Examples of agricultural fibers include, but are not limited to, wheat straw, rice straw, and bagasse.

Biofilter means an enclosed control system such as a tank or series of tanks with a fixed roof that contact emissions with a solid media (such as bark) and use microbiological activity to transform organic pollutants in a process exhaust stream to innocuous compounds such as carbon dioxide, water, and inorganic salts. Wastewater treatment systems such as aeration lagoons or activated sludge systems are not considered to be biofilters.

Capture device means a hood, enclosure, or other means of collecting emissions into a duct so that the emissions can be measured.

Capture efficiency means the fraction (expressed as a percentage) of the pollutants from an emission source that are collected by a capture device.

Catalytic oxidizer means a control system that combusts or oxidizes, in the presence of a catalyst, exhaust gas from a process unit. Catalytic oxidizers include regenerative catalytic oxidizers and thermal catalytic oxidizers.

Combustion unit means a dryer burner, process heater, or boiler used for combustion of organic HAP emissions.

Control device means any equipment that reduces the quantity of HAP emitted to the air. The device may destroy the HAP or secure the HAP for subsequent recovery. Control devices include, but are not limited to, thermal or catalytic oxidizers, combustion units that incinerate process exhausts, biofilters, and condensers.

Control system or add-on control system means the combination of capture and control devices used to reduce HAP emissions to the atmosphere.

Conveyor strand dryer means a conveyor dryer used to reduce the moisture of wood strands used in the manufacture of oriented strandboard, laminated strand lumber, or other wood strand-based products. A *conveyor strand dryer* is a process unit.

Conveyor strand dryer zone means each portion of a conveyor strand dryer with a separate heat exchange system and exhaust vent(s). Conveyor strand dryers contain multiple zones (e.g., three zones), which may be divided into multiple sections.

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 compliance option, operating requirement, or work practice requirement;

(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 compliance option, operating requirement, or work practice requirement in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart. A deviation is not always a violation. The determination of whether a deviation constitutes a violation of the standard is up to the discretion of the entity responsible for enforcement of the standards.

Dryer heated zones means the zones of a softwood veneer dryer or fiberboard mat dryer that are equipped with heating and hot air circulation units. The cooling zone(s) of the dryer through which ambient air is blown are not part of the dryer heated zones.

Dry forming means the process of making a mat of resinated fiber to be compressed into a reconstituted wood product such as particleboard, oriented strandboard, medium density fiberboard, or hardboard.

Dry rotary dryer means a rotary dryer that dries wood particles or fibers with a maximum inlet moisture content of less than or equal to 30 percent (by weight, dry basis) and operates with a maximum inlet temperature of less than or equal to 600°F. A dry rotary dryer is a process unit.

Fiber means the discrete elements of wood or similar cellulosic material, which are separated by mechanical means, as in refining, that can be formed into boards.

Fiberboard means a composite panel composed of cellulosic fibers (usually wood or agricultural material) made by wet forming and compacting a mat of fibers. Fiberboard density generally is less than 0.50 grams per cubic centimeter (31.5 pounds per cubic foot).

Fiberboard mat dryer means a dryer used to reduce the moisture of wet-formed wood fiber mats by operation at elevated temperature. A *fiberboard mat dryer* is a process unit.

Flame zone means the portion of the combustion chamber in a combustion unit that is occupied by the flame envelope.

Furnish means the fibers, particles, or strands used for making boards.

Glue-laminated beam means a structural wood beam made by bonding lumber together along its faces with resin.

Green rotary dryer means a rotary dryer that dries wood particles or fibers with an inlet moisture content of greater than 30 percent (by weight, dry basis) at any dryer inlet temperature or operates with an inlet temperature of greater than 600°F with any inlet moisture content. A *green rotary dryer* is a process unit.

Group 1 miscellaneous coating operations means application of edge seals, nail lines, logo (or other information) paint, shelving edge fillers, trademark/gradestamp inks, and wood putty patches to plywood and composite wood products (except kiln-dried lumber) on the same site where the plywood and composite wood products are manufactured. Group 1 miscellaneous coating operations also include application of synthetic patches to plywood at new affected sources.

Hardboard means a composite panel composed of inter-felted cellulosic fibers made by dry or wet forming and pressing of a resinated fiber mat. Hardboard generally has a density of 0.50 grams per cubic centimeter (31.5 pounds per cubic foot) or greater.

Hardboard oven means an oven used to heat treat or temper hardboard after hot pressing. Humidification chambers are not considered as part of hardboard ovens. A *hardboard oven* is a process unit.

Hardwood means the wood of a broad-leafed tree, either deciduous or evergreen. Examples of hardwoods include, but are not limited to, aspen, birch, poplar, and oak.

Hardwood veneer dryer means a dryer that removes excess moisture from veneer by conveying the veneer through a heated medium on rollers, belts, cables, or wire mesh. Hardwood veneer dryers are used to dry veneer with less than 30 percent softwood species on an annual volume basis. Veneer kilns that operate as batch units, veneer dryers heated by radio frequency or microwaves that are used to redry veneer, and veneer redryers (defined elsewhere in this section) that are heated by conventional means are not considered to be hardwood veneer dryers. A *hardwood veneer dryer* is a process unit.

Kiln-dried lumber means solid wood lumber that has been dried in a lumber kiln.

Laminated strand lumber (LSL) means a composite product formed into a billet made of thin wood strands cut from whole logs, resinated, and pressed together with the grain of each strand oriented parallel to the length of the finished product.

Laminated veneer lumber (LVL) means a composite product formed into a billet made from layers of resinated wood veneer sheets or pieces pressed together with the grain of each veneer aligned primarily along the length of the finished product. Laminated veneer lumber includes parallel strand lumber (PSL).

Lumber kiln means an enclosed dryer operated at elevated temperature to reduce the moisture content of lumber.

Medium density fiberboard (MDF) means a composite panel composed of cellulosic fibers (usually wood or agricultural fiber) made by dry forming and pressing of a resinated fiber mat.

Method detection limit means the minimum concentration of an analyte that can be determined with 99 percent confidence that the true value is greater than zero.

Miscellaneous coating operations means application of any of the following to plywood or composite wood products: edge seals, moisture sealants, anti-skid coatings, company logos, trademark or grade stamps, nail lines, synthetic patches, wood patches, wood putty, concrete forming oils, glues for veneer composing, and shelving edge fillers. Miscellaneous coating operations also include the application of primer to oriented strandboard siding that occurs at the same site as oriented strandboard manufacture and application of asphalt, clay slurry, or titanium dioxide coatings to fiberboard at the same site of fiberboard manufacture.

MSF means thousand square feet (92.9 square meters). Square footage of panels is usually measured on a thickness basis, such as ⅜-inch, to define the total volume of panels. Equation 6 of § 63.2262(j) shows how to convert from one thickness basis to another.

Nondetect data means, for the purposes of this subpart, any value that is below the method detection limit.

Non-HAP coating means a coating with HAP contents below 0.1 percent by mass for Occupational Safety and Health Administration-defined carcinogens as specified in 29 CFR 1910.1200(d)(4), and below 1.0 percent by mass for other HAP compounds.

1-hour period means a 60-minute period.

Oriented strandboard (OSB) means a composite panel produced from thin wood strands cut from whole logs, formed into resinated layers (with the grain of strands in one layer oriented perpendicular to the strands in adjacent layers), and pressed.

Oven-dried ton(s) (ODT) means tons of wood dried until all of the moisture in the wood is removed. One oven-dried ton equals 907 oven-dried kilograms.

Partial wood products enclosure means an enclosure that does not meet the design criteria for a wood products enclosure as defined in this subpart.

Particle means a discrete, small piece of cellulosic material (usually wood or agricultural fiber) produced mechanically and used as the aggregate for a particleboard.

Particleboard means a composite panel composed primarily of cellulosic materials (usually wood or agricultural fiber) generally in the form of discrete pieces or particles, as distinguished from fibers, which are pressed together with resin.

Plywood means a panel product consisting of layers of wood veneers hot pressed together with resin. Plywood includes panel products made by hot pressing (with resin) veneers to a substrate such as particleboard, medium density fiberboard, or lumber.

Plywood and composite wood products (PCWP) manufacturing facility means a facility that manufactures plywood and/or composite wood products by bonding wood material (fibers, particles, strands, veneers, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any

facility. Plywood and composite wood products include, but are not limited to, plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

Press predryer means a dryer used to reduce the moisture and elevate the temperature of a wet-formed fiber mat before the mat enters a hot press. A *press predryer* is a process unit.

Pressurized refiner means a piece of equipment operated under pressure for preheating (usually by steaming) wood material and refining (rubbing or grinding) the wood material into fibers. Pressurized refiners are operated with continuous infeed and outfeed of wood material and maintain elevated internal pressures (*i.e.*, there is no pressure release) throughout the preheating and refining process. A *pressurized refiner* is a process unit.

Primary tube dryer means a single-stage tube dryer or the first stage of a multi-stage tube dryer. Tube dryer stages are separated by vents for removal of moist gases between stages (*e.g.*, a product cyclone at the end of a single-stage dryer or between the first and second stages of a multi-stage tube dryer). The first stage of a multi-stage tube dryer is used to remove the majority of the moisture from the wood furnish (compared to the moisture reduction in subsequent stages of the tube dryer). Blow-lines used to apply resin are considered part of the primary tube dryer. A *primary tube dryer* is a process unit.

Process unit means equipment classified according to its function such as a blender, dryer, press, former, or board cooler.

Reconstituted wood product board cooler means a piece of equipment designed to reduce the temperature of a board by means of forced air or convection within a controlled time period after the board exits the reconstituted wood product press unloader. Board coolers include wicket and star type coolers commonly found at medium density fiberboard and particleboard plants. Board coolers do not include cooling sections of dryers (*e.g.*, veneer dryers or fiberboard mat dryers) or coolers integrated into or following hardboard bake ovens or humidifiers. A *reconstituted wood product board cooler* is a process unit.

Reconstituted wood product press means a press, including (if applicable) the press unloader, that presses a resinated mat of wood fibers, particles, or strands between hot platens or hot rollers to compact and set the mat into a panel by simultaneous application of heat and pressure. Reconstituted wood product presses are used in the manufacture of hardboard, medium density fiberboard, particleboard, and oriented strandboard. Extruders are not considered to be reconstituted wood product presses. A *reconstituted wood product press* is a process unit.

Representative operating conditions means operation of a process unit during performance testing under the conditions that the process unit will typically be operating in the future, including use of a representative range of materials (*e.g.*, wood material of a typical species mix and moisture content or typical resin formulation) and representative operating temperature range.

Resin means the synthetic adhesive (including glue) or natural binder, including additives, used to bond wood or other cellulosic materials together to produce plywood and composite wood products.

Responsible official means responsible official as defined in 40 CFR 70.2 and 40 CFR 71.2.

Rotary strand dryer means a rotary dryer operated at elevated temperature and used to reduce the moisture of wood strands used in the manufacture of oriented strandboard, laminated strand lumber, or other wood strand-based products. A *rotary strand dryer* is a process unit.

Secondary tube dryer means the second stage and subsequent stages following the primary stage of a multi-stage tube dryer. Secondary tube dryers, also referred to as relay dryers, operate at lower temperatures than the primary tube dryer they follow. Secondary tube dryers are used to remove only a small amount of the furnish moisture compared to the furnish moisture reduction across the primary tube dryer. A *secondary tube dryer* is a process unit.

Softwood means the wood of a coniferous tree. Examples of softwoods include, but are not limited to, Southern yellow pine, Douglas fir, and White spruce.

Softwood veneer dryer means a dryer that removes excess moisture from veneer by conveying the veneer through a heated medium, generally on rollers, belts, cables, or wire mesh. Softwood veneer dryers are used to dry veneer with greater than or equal to 30 percent softwood species on an annual volume basis. Veneer kilns that operate as batch units, veneer dryers heated by radio frequency or microwaves that are used to redry veneer, and veneer redryers (defined elsewhere in this section) that are heated by conventional means are not considered to be softwood veneer dryers. A *softwood veneer dryer* is a process unit.

Startup means bringing equipment online and starting the production process.

Startup, initial means the first time equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startups (as defined in this section) following malfunction or shutdowns or following changes in product or between batch operations. Initial startup does not include startup of equipment that occurred when the source was an area source.

Startup, shutdown, and malfunction plan (SSMP) means a plan developed according to the provisions of § 63.6(e)(3).

Strand means a long (with respect to thickness and width), flat wood piece specially cut from a log for use in oriented strandboard, laminated strand lumber, or other wood strand-based product.

Temporary total enclosure (TTE) 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 40 CFR part 51, appendix M.

Thermal oxidizer means a control system that combusts or oxidizes exhaust gas from a process unit. Thermal oxidizers include regenerative thermal oxidizers and combustion units.

Total hazardous air pollutant emissions means, for purposes of this subpart, the sum of the emissions of the following six compounds: acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde.

Tube dryer means a single-stage or multi-stage dryer operated at elevated temperature and used to reduce the moisture of wood fibers or particles as they are conveyed (usually pneumatically) through the dryer. Resin may or may not be applied to the wood material before it enters the tube dryer. A *tube dryer* is a process unit.

Veneer means thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

Veneer redryer means a dryer heated by conventional means, such as direct wood-fired, direct-gas-fired, or steam heated, that is used to redry veneer that has been previously dried. Because the veneer dried in a veneer redryer has been previously dried, the inlet moisture content of the veneer entering the redryer is less than 25 percent (by weight, dry basis). Batch units used to redry veneer (such as redry cookers) are

not considered to be veneer redryers. A *veneer redryer* is a process unit.

Wet control device means any equipment that uses water as a means of collecting an air pollutant. Wet control devices include scrubbers, wet electrostatic precipitators, and electrified filter beds. Wet control devices do not include biofilters or other equipment that destroys or degrades HAP.

Wet forming means the process of making a slurry of water, fiber, and additives into a mat of fibers to be compressed into a fiberboard or hardboard product.

Wood I-joists means a structural wood beam with an I-shaped cross section formed by bonding (with resin) wood or laminated veneer lumber flanges onto a web cut from a panel such as plywood or oriented strandboard.

Wood products enclosure means a permanently installed containment that was designed to meet the following physical design criteria:

(1) Any natural draft opening shall be at least four equivalent opening diameters from each HAP-emitting point, except for where board enters and exits the enclosure, unless otherwise specified by the EPA Administrator.

(2) The total area of all natural draft openings shall not exceed 5 percent of the surface area of the enclosure's four walls, floor, and ceiling.

(3) The average facial velocity of air through all natural draft openings shall be at least 3,600 meters per hour (200 feet per minute). The direction of airflow through all natural draft openings shall be into the enclosure.

(4) All access doors and windows whose areas are not included in item 2 of this definition and are not included in the calculation of facial velocity in item 3 of this definition shall be closed during routine operation of the process.

(5) The enclosure is designed and maintained to capture all emissions for discharge through a control device.

Work practice requirement means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

Tables to Subpart DDDD of Part 63

TABLE 1A TO SUBPART DDDD OF PART 63.—PRODUCTION-BASED COMPLIANCE OPTIONS

For the following process units . . .	You must meet the following production-based compliance option (total HAP [a] basis) . . .
(1) Fiberboard mat dryer heated zones (at new affected sources only)	0.022 lb/MSF ½″.
(2) Green rotary dryers	0.058 lb/ODT.
(3) Hardboard ovens	0.022 lb/MSF ⅛″.
(4) Press predryers (at new affected sources only)	0.037 lb/MSF ½″.
(5) Pressurized refiners	0.039 lb/ODT.
(6) Primary tube dryers	0.26 lb/ODT.
(7) Reconstituted wood product board coolers (at new affected sources only)	0.014 lb/MSF ¾″.
(8) Reconstituted wood product presses	0.30 lb/MSF ¾″.
(9) Softwood veneer dryer heated zones	0.022 lb/MSF ⅜″.
(10) Rotary strand dryers	0.18 lb/ODT.
(11) Secondary tube dryers	0.010 lb/ODT.

[a] Total HAP, as defined in § 63.2292, includes acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. lb/ODT = pounds per oven-dried ton; lb/MSF = pounds per thousand square feet with a specified thickness basis (inches). Section 63.2262(j) shows how to convert from one thickness basis to another.

Note: There is no production-based compliance option for conveyor strand dryers.

TABLE 1B TO SUBPART DDDD OF PART 63.—ADD-ON CONTROL SYSTEMS COMPLIANCE OPTIONS

For each of the following process units . . .	You must comply with one of the following six compliance options by using an emissions control system . . .
Fiberboard mat dryer heated zones (at new affected sources only); green rotary dryers; hardboard ovens; press predryers (at new affected sources only); pressurized refiners; primary tube dryers; secondary tube dryers; reconstituted wood product board coolers (at new affected sources only); reconstituted wood product presses; softwood veneer dryer heated zones; rotary strand dryers; conveyor strand dryer zone one (at existing affected sources); and conveyor strand dryer zones one and two (at new affected sources).	(1) Reduce emissions of total HAP, measured as THC (as carbon) [a], by 90 percent; or (2) Limit emissions of total HAP, measured as THC (as carbon) [a], to 20 ppmvd; or (3) Reduce methanol emissions by 90 percent; or (4) Limit methanol emissions to less than or equal to 1 ppmvd if uncontrolled methanol emissions entering the control device are greater than or equal to 10 ppmvd; or (5) Reduce formaldehyde emissions by 90 percent; or (6) Limit formaldehyde emissions to less than or equal to 1 ppmvd if uncontrolled formaldehyde emissions entering the control device are greater than or equal to 10 ppmvd.

[a] You may choose to subtract methane from THC as carbon measurements.

TABLE 2 TO SUBPART DDDD OF PART 63.—OPERATING REQUIREMENTS

If you operate a(n) . . .	You must . . .	Or you must . . .
(1) Thermal oxidizer	Maintain the 3-hour block average firebox temperature above the minimum temperature established during the performance test.	Maintain the 3-hour block average THC concentration [a] in the thermal oxidizer exhaust below the maximum concentration established during the performance test.

TABLE 2 TO SUBPART DDDD OF PART 63.—OPERATING REQUIREMENTS—Continued

If you operate a(n) . . .	You must . . .	Or you must . . .
(2) Catalytic oxidizer	Maintain the 3-hour block average catalytic oxidizer temperature above the minimum temperature established during the performance test; AND check the activity level of a representative sample of the catalyst at least every 12 months.	Maintain the 3-hour block average THC concentration [a] in the catalytic oxidizer exhaust below the maximum concentration established during the performance test.
(3) Biofilter	Maintain the 24-hour block biofilter bed temperature within the range established according to § 63.2262(m).	Maintain the 24-hour block average THC concentration [a] in the biofilter exhaust below the maximum concentration established during the performance test.
(4) Control device other than a thermal oxidizer, catalytic oxidizer, or biofilter.	Petition the EPA Administrator for site-specific operating parameter(s) to be established during the performance test and maintain the average operating parameter(s) within the range(s) established during the performance test.	Maintain the 3-hour block average THC concentration [a] in the control device exhaust below the maximum concentration established during the performance test.
(5) Process unit that meets a compliance option in Table 1A of this subpart, or a process unit that generates debits in an emissions average without the use of a control device.	Maintain on a daily basis the process unit controlling operating parameter(s) within the ranges established during the performance test according to § 63.2262(n).	Maintain the 3-hour block average THC concentration [a] in the process unit exhaust below the maximum concentration established during the performance test.

[a] You may choose to subtract methane from THC measurements.

TABLE 3 TO SUBPART DDDD OF PART 63.—WORK PRACTICE REQUIREMENTS

For the following process units at existing or new affected sources . . .	You must . . .
(1) Dry rotary dryers	Process furnish with a 24-hour block average inlet moisture content of less than or equal to 30 percent (by weight, dry basis); AND operate with a 24-hour block average inlet dryer temperature of less than or equal to 600°F.
(2) Hardwood veneer dryers	Process less than 30 volume percent softwood species on an annual basis.
(3) Softwood veneer dryers	Minimize fugitive emissions from the dryer doors through (proper maintenance procedures) and the green end of the dryers (through proper balancing of the heated zone exhausts).
(4) Veneer redryers	Process veneer that has been previously dried, such that the 24-hour block average inlet moisture content of the veneer is less than or equal to 25 percent (by weight, dry basis).
(5) Group 1 miscellaneous coating operations	Use non-HAP coatings as defined in § 63.2292.

TABLE 4 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .
(1) Each process unit subject to a compliance option in Table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A (as appropriate).
(2) Each process unit subject to a compliance option in Table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Determine velocity and volumetric flow rate	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 (as appropriate).
(3) Each process unit subject to a compliance option in Table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Conduct gas molecular weight analysis	Method 3, 3A, or 3B in appendix A to 40 CFR part 60 (as appropriate).
(4) Each process unit subject to a compliance option in Table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60; OR Method 320 in appendix A to 40 CFR part 63; OR ASTM D6348–03 (IBR, see § 63.14(b)).
(5) Each process unit subject to a compliance option in Table 1B to this subpart for which you choose to demonstrate compliance using a total HAP as THC compliance option.	Measure emissions of total HAP as THC	Method 25A in appendix A to 40 CFR part 60. You may measure emissions of methane using EPA Method 18 in appendix A to 40 CFR part 60 and subtract the methane emissions from the emissions of total HAP as THC.
(6) Each process unit subject to a compliance option in Table 1A to this subpart; or for each process unit used in calculation of an emissions average under § 63.2240(c).	Measure emissions of total HAP (as defined in § 63.2292).	Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14(f)); OR ASTM D6348–03 (IBR, see § 63.14(b)) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.

TABLE 4 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .
(7) Each process unit subject to a compliance option in Table 1B to this subpart for which you choose to demonstrate compliance using a methanol compliance option.	Measure emissions of methanol	Method 308 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method CI/WP–98.01 (IBR, see § 63.14(f)); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14(f)).
(8) Each process unit subject to a compliance option in Table 1B to this subpart for which you choose to demonstrate compliance using a formaldehyde compliance option.	Measure emissions of formaldehyde	Method 316 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR Method 0011 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication No. SW–846) for formaldehyde; OR the NCASI Method CI/WP–98.01 (IBR, see § 63.14(f)); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14(f)).
(9) Each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in Table 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Meet the design specifications included in the definition of wood products enclosure in § 63.2292 OR Determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M, to determine capture efficiency (except for wood products enclosures as defined in § 63.2292). Enclosures that meet the definition of wood products enclosure or that meet Method 204 requirements for a permanent total enclosure (PTE) are assumed to have a capture efficiency of 100 percent. Enclosures that do not meet either the PTE requirements or design criteria for a wood products enclosure must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use tracer gas method contained in appendix A to this subpart.
(10) Each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in Table 1A to this subpart.	Determine the percent capture efficiency	A TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart.
(11) Each process unit subject to a compliance option in Table 1A and 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in Table 2 to this subpart.	Data from the parameter monitoring system or THC CEMS and the applicable performance test method(s).

TABLE 5 TO SUBPART DDDD OF PART 63.—PERFORMANCE TESTING AND INITIAL COMPLIANCE DEMONSTRATIONS FOR THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For each . . .	For the following compliance options and operating requirements . . .	You have demonstrated initial compliance if . . .
(1) Process unit listed in Table 1A to this subpart.	Meet the production-based compliance options listed in Table 1A to this subpart.	The average total HAP emissions measured using the methods in Table 4 to this subpart over the 3-hour performance test are no greater than the compliance option in Table 1A to this subpart; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions did not exceed the compliance option value.

TABLE 5 TO SUBPART DDDD OF PART 63.—PERFORMANCE TESTING AND INITIAL COMPLIANCE DEMONSTRATIONS FOR THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS—Continued

For each . . .	For the following compliance options and operating requirements . . .	You have demonstrated initial compliance if . . .
(2) Process unit listed in Table 1B to this subpart.	Reduce emissions of total HAP, measured as THC, by 90 percent.	Total HAP emissions, measured using the methods in Table 4 to this subpart over the 3-hour performance test, are reduced by at least 90 percent, as calculated using the procedures in § 63.2262; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions were reduced by at least 90 percent.
(3) Process unit listed in Table 1B to this subpart.	Limit emissions of total HAP, measured as THC, to 20 ppmvd.	The average total HAP emissions, measured using the methods in Table 4 to this subpart over the 3-hour performance test, do not exceed 20 ppmvd; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions did not exceed 20 ppmvd.
(4) Process unit listed in Table 1B to this subpart.	Reduce methanol or formaldehyde emissions by 90 percent.	The methanol or formaldehyde emissions measured using the methods in Table 4 to this subpart over the 3-hour performance test, are reduced by at least 90 percent, as calculated using the procedures in § 63.2262; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions were reduced by at least 90 percent.
(5) Process unit listed in Table 1B to this subpart.	Limit methanol or formaldehyde emissions to less than or equal to 1 ppmvd (if uncontrolled emissions are greater than or equal to 10 ppmvd).	The average methanol or formaldehyde emissions, measured using the methods in Table 4 to this subpart over the 3-hour performance test, do not exceed 1 ppmvd; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions did not exceed 1 ppmvd. If the process unit is a reconstituted wood product press or a reconstituted wood product board cooler, your capture device either meets the EPA Method 204 criteria for a PTE or achieves a capture efficiency of greater than or equal to 95 percent.
(6) Reconstituted wood product press at a new or existing affected source, or reconstituted wood product board cooler at a new affected source.	Compliance options in Tables 1A and 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	You submit the results of capture efficiency verification using the methods in Table 4 to this subpart with your Notification of Compliance Status.
(7) Process unit listed in Table 1B to this subpart controlled by routing exhaust to a combustion unit.	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	You submit with your Notification of Compliance Status documentation showing that the process exhausts controlled enter into the flame zone of your combustion unit.
(8) Process unit listed in Table 1B to this subpart using a wet control device as the sole means of reducing HAP emissions.	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	You submit with your Notification of Compliance Status your plan to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere.

TABLE 6 TO SUBPART DDDD OF PART 63.—INITIAL COMPLIANCE DEMONSTRATIONS FOR WORK PRACTICE REQUIREMENTS

For each . . .	For the following work practice requirements . . .	You have demonstrated initial compliance if . . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600 °F.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a ''dry rotary dryer'' AND you have a record of the inlet moisture content and inlet dryer temperature (as required in § 63.2263).
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a ''hardwood veneer dryer'' AND you have a record of the percentage of softwoods processed in the dryer (as required in § 63.2264).
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	You meet the work practice requirement AND you submit with the Notification of Compliance Status a copy of your plan for minimizing fugitive emissions from the veneer dryer heated zones (as required in § 63.2265).
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer operates only as a redryer AND you have a record of the veneer inlet moisture content of the veneer processed in the redryer (as required in § 63.2266).
(5) Group 1 miscellaneous coating operations	Use non-HAP coatings as defined in § 63.2292.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that you are using non-HAP coatings AND you have a record showing that you are using non-HAP coatings.

TABLE 7 TO SUBPART DDDD OF PART 63.—CONTINUOUS COMPLIANCE WITH THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For . . .	For the following compliance options and operating requirements . . .	You must demonstrate continuous compliance by . . .
(1) Each process unit listed in Table 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 to this subpart based on monitoring of operating parameters.	Collecting and recording the operating parameter monitoring system data listed in Table 2 to this subpart for the process unit according to § 63.2269(a) through (b) and § 63.2270; AND reducing the operating parameter monitoring system data to the specified averages in units of the applicable requirement according to calculations in § 63.2270; AND maintaining the average operating parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established according to § 63.2262.
(2) Each process unit listed in Tables 1A and 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Compliance options in Tables 1A and 1B to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 of this subpart based on THC CEMS data.	Collecting and recording the THC monitoring data listed in Table 2 to this subpart for the process unit according to § 63.2269(d); AND reducing the CEMS data to 3-hour block averages according to calculations in § 63.2269(d); AND maintaining the 3-hour block average THC concentration in the exhaust gases less than or equal to the THC concentration established according to § 63.2262.

TABLE 7 TO SUBPART DDDD OF PART 63.—CONTINUOUS COMPLIANCE WITH THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS—Continued

For . . .	For the following compliance options and operating requirements . . .	You must demonstrate continuous compliance by . . .
(3) Each process unit using a biofilter	Compliance options in Tables 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Conducting a repeat performance test using the applicable method(s) specified in Table 4 to this subpart within 2 years following the previous performance test and within 180 days after each replacement of any portion of the biofilter bed media with a different type of media or each replacement of more than 50 percent (by volume) of the biofilter bed media with the same type of media.
(4) Each process unit using a catalytic oxidizer	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Checking the activity level of a representative sample of the catalyst at least every 12 months and taking any necessary corrective action to ensure that the catalyst is performing within its design range.
(5) Each process unit listed in Table 1A to this subpart, or each process unit without a control device used in calculation of an emissions averaging debit under § 63.2240(c).	Compliance options in Table 1A to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 to this subpart based on monitoring of process unit controlling operating parameters.	Collecting and recording on a daily basis process unit controlling operating parameter data; AND maintaining the operating parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established according to § 63.2262.
(6) Each Process unit listed in Table 1B to this subpart using a wet control device as the sole means of reducing HAP emissions.	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Implementing your plan to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere.

TABLE 8 TO SUBPART DDDD OF PART 63.—CONTINUOUS COMPLIANCE WITH THE WORK PRACTICE REQUIREMENTS

For . . .	For the following work practice requirements . . .	You must demonstrate continuous compliance by . . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600 °F.	Maintaining the 24-hour block average inlet furnish moisture content at less than or equal to 30 percent (by weight, dry basis) AND maintaining the 24-hour block average inlet dryer temperature at less than or equal to 600 °F; AND keeping records of the inlet temperature of furnish moisture content and inlet dryer temperature.
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	Maintaining the volume percent softwood species processed below 30 percent AND keeping records of the volume percent softwood species processed.
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	Following (and documenting that you are following) your plan for minimizing fugitive emissions.
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	Maintaining the 24-hour block average inlet moisture content of the veneer processed at or below of less than or 25 percent AND keeping records of the inlet moisture content of the veneer processed.
(5) Group 1 miscellaneous coating operations	Use non-HAP coatings as defined in § 63.2292.	Continuing to use non-HAP coatings AND keeping records showing that you are using non-HAP coatings.

TABLE 9 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
(1) Compliance report	The information in § 63.2281(c) through (g)	Semiannually according to the requirements in § 63.2281(b).
(2) immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	(i) Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.

TABLE 9 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
	(ii) The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

TABLE 10 TO SUBPART DDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards.	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention, fragmentation.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (*e.g.,* 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and SSMP; content of SSMP.	Yes.
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)(1)–(9)	Opacity/Visible Emission (VE) Standards	Requirements for opacity and visible emission standards.	NA.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(i)(15)	[Reserved].		
§ 63.6(i)(16)	Compliance Extension	Compliance extension and Administrator's authority.	Yes.

TABLE 10 TO SUBPART DDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If have to reschedule performance test, must notify Administrator as soon as practicable.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs for at least the time specified in the relevant standard; compliance is based on arithmetic mean of three runs; specifies conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status; keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in standard.	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance specifications in appendix B of part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Requirements for flares in § 63.11 apply	NA.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with and good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Operation and Maintenance of CMS	Must maintain and operate CMS in accordance with § 63.6(e)(1).	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS	Must maintain spare parts for routine CMS repairs.	Yes.

TABLE 10 TO SUBPART DDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.8(c)(1)(iii)	SSMP for CMS	Must develop and implement SSMP for CMS.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission of parameter measurements; must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	COMS minimum procedures	NA.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high-level calibration check requirements; out-of-control periods.	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports.	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that can't be used in average; rounding of data.	Yes.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b)(1)–(2)	Initial Notifications	Submit notification 120 days after effective date; contents of notification.	Yes.
§ 63.9(b)(3)	[Reserved].		
§ 63.9(b)(4)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct; notification of commencement of construct/reconstruct; notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed best available control technology/lowest achievable emission rate.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify EPA Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	Notify EPA Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	Yes.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes.

TABLE 10 TO SUBPART DDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change.	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records Related to Startup, Shutdown, and Malfunction.	Occurrence of each of operation (process equipment); occurrence of each malfunction of air pollution equipment; maintenance on air pollution control equipment; actions during startup, shutdown, and malfunction.	Yes.
§ 63.10(b)(2)(vi) and (x)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control	Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with compliance options and operating requirements; performance test, performance evaluation, and visible emission observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)(1)–(6), (9)–(15)	Records	Additional records for CMS	Yes.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	What to report and when	NA.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit; written copy of performance evaluation; 3 copies of COMS performance evaluation.	Yes.
§ 63.10(e)(3)	Reports	Excess emission reports	No.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data.	NA.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for EPA Administrator to waive.	Yes.
§ 63.11	Flares	Requirements for flares	NA.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are send.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

Appendix A to Subpart DDDD of Part 63—Alternative Procedure to Determine Capture Efficiency From Enclosures Around Hot Presses in the Plywood and Composite Wood Products Industry Using Sulfur Hexafluoride Tracer Gas

1.0 Scope and Application

This procedure has been developed specifically for the rule for the plywood and composite wood products (PCWP) industry and is used to determine the capture efficiency of a partial hot press enclosure in that industry. This procedure is applicable for the determination of capture efficiency for enclosures around hot presses and is an alternative to the construction of temporary total enclosures (TTE). Sulfur hexafluoride (SF_6) is used as a tracer gas (other tracer gases may be used if approved by the EPA Administrator). This gas is not indigenous to the ambient atmosphere and is nonreactive.

This procedure uses infrared spectrometry (IR) as the analytical technique. When the infrared spectrometer used is a Fourier-Transform Infrared spectrometer (FTIR), an alternate instrument calibration procedure may be used; the alternate calibration procedure is the calibration transfer standard (CTS) procedure of EPA Method 320 (appendix A to 40 CFR part 63). Other analytical techniques which are capable of equivalent Method Performance (Section 13.0) also may be used. Specifically, gas chromatography with electron capture detection (GC/ECD) is an applicable technique for analysis of SF_6.

2.0 Summary of Method

A constant mass flow rate of SF_6 tracer gas is released through manifolds at multiple locations within the enclosure to mimic the release of hazardous air pollutants during the press process. This test method requires a minimum of three SF_6 injection points (two at the press unloader and one at the press) and provides details about considerations for locating the injection points. A GC/ECD is used to measure the concentration of SF_6 at the inlet duct to the control device (outlet duct from enclosure). Simultaneously, EPA Method 2 (appendix A to 40 CFR part 60) is used to measure the flow rate at the inlet duct to the control device. The concentration and flow rate measurements are used to calculate the mass emission rate of SF_6 at the control device inlet. Through calculation of the mass of SF_6 released through the manifolds and the mass of SF_6 measured at the inlet to the control device, the capture efficiency of the enclosure is calculated.

In addition, optional samples of the ambient air may be taken at locations around the perimeter of the enclosure to quantify the ambient concentration of SF_6 and to identify those areas of the enclosure that may be performing less efficiently; these samples would be taken using disposable syringes and would be analyzed using a GC/ECD.

Finally, in addition to the requirements specified in this procedure, the data quality objectives (DQO) or lower confidence limit (LCL) criteria specified in appendix A to 40 CFR part 63, subpart KK, Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods, must also be satisfied. A minimum of three test runs are required for this procedure; however, additional test runs may be required based on the results of the DQO or LCL analysis.

3.0 Definitions

3.1 Capture efficiency (CE). The weight per unit time of SF_6 entering the control device divided by the weight per unit time of SF_6 released through manifolds at multiple locations within the enclosure.

3.2 Control device (CD). The equipment used to reduce, by destruction or removal, press exhaust air pollutants prior to discharge to the ambient air.

3.3 Control/destruction efficiency (DE). The volatile organic compound or HAP removal efficiency of the control device.

3.4 Data Quality Objective (DQO) Approach. A statistical procedure to determine the precision of the data from a test series and to qualify the data in the determination of capture efficiency for compliance purposes. If the results of the DQO analysis of the initial three test runs do not satisfy the DQO criterion, the LCL approach can be used or additional test runs must be conducted. If additional test runs are conducted, then the DQO or LCL analysis is conducted using the data from both the initial test runs and all additional test runs.

3.5 Lower Confidence Limit (LCL) Approach. An alternative statistical procedure that can be used to qualify data in the determination of capture efficiency for compliance purposes. If the results of the LCL approach produce a CE that is too low for demonstrating compliance, then additional test runs must be conducted until the LCL or DQO is met. As with the DQO, data from all valid test runs must be used in the calculation.

3.6 Minimum Measurement Level (MML). The minimum tracer gas concentration expected to be measured during the test series. This value is selected by the tester based on the capabilities of the IR spectrometer (or GC/ECD) and the other known or measured parameters of the hot press enclosure to be tested. The selected MML must be above the low-level calibration standard and preferably below the mid-level calibration standard.

3.7 Method 204. The U.S. EPA Method 204, ''Criteria For and Verification of a Permanent or Temporary Total Enclosure'' (40 CFR part 51, appendix M).

3.8 Method 205. The U.S. EPA Method 205, ''Verification of Gas Dilution Systems for Field Instrument Calibrations'' (40 CFR part 51, appendix M).

3.9 Method 320. The U.S. EPA Method 320, ''Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy'' (40 CFR part 63, appendix A).

3.10 Overall capture and control efficiency (CCE). The collection and control/destruction efficiency of both the PPE and CD combined. The CCE is calculated as the product of the CE and DE.

3.11 Partial press enclosure (PPE). The physical barrier that ''partially'' encloses the press equipment, captures a significant amount of the associated emissions, and transports those emissions to the CD.

3.12 Test series. A minimum of three test runs or, when more than three runs are conducted, all of the test runs conducted.

4.0 Interferences

There are no known interferences.

5.0 Safety

Sulfur hexafluoride is a colorless, odorless, nonflammable liquefied gas. It is stable and nonreactive and, because it is noncorrosive, most structural materials are compatible with it. The Occupational Safety and Health Administration Permissible Emission Limit-Time Weighted Average (PEL–TWA) and Threshold Limit Value-Time Weighted Average (TLV–TWA) concentrations are 1,000 parts per million. Sulfur hexafluoride is an asphyxiant. Exposure to an oxygen-deficient atmosphere (less than 19.5 percent oxygen) may cause dizziness, drowsiness, nausea, vomiting, excess salivation, diminished mental alertness, loss of consciousness, and death. Exposure to atmospheres containing less than 12 percent oxygen will bring about unconsciousness without warning and so quickly that the individuals cannot help themselves. Contact with liquid or cold vapor may cause frostbite. Avoid breathing sulfur hexafluoride gas. Self-contained breathing apparatus may be required by rescue workers. Sulfur hexafluoride is not listed as a carcinogen or a potential carcinogen.

6.0 Equipment and Supplies

This method requires equipment and supplies for: (a) the injection of tracer gas into the enclosure, (b) the measurement of the tracer gas concentration in the exhaust gas entering the control device, and (c) the measurement of the volumetric flow rate of the exhaust gas entering the control device. In addition, the requisite equipment needed for EPA Methods 1–4 in appendix A to 40 CFR part 60 will be required. Equipment and supplies for optional ambient air sampling are discussed in Section 8.6.

6.1 Tracer Gas Injection.

6.1.1 Manifolds. This method requires the use of tracer gas supply cylinder(s) along with the appropriate flow control elements. Figure 1 shows a schematic drawing of the injection system showing potential locations for the tracer gas manifolds. Figure 2 shows a schematic drawing of the recommended configuration of the injection manifold. Three tracer gas discharge manifolds are required at a minimum.

6.1.2 Flow Control Meter. Flow control and measurement meter for measuring the quantity of tracer gas injected. A mass flow, volumetric flow, or critical orifice control meter can be used for this method. The meter must be accurate to within ± 5 percent at the flow rate used. This means that the flow meter must be calibrated against a primary standard for flow measurement at the appropriate flow rate.

6.2 Measurement of Tracer Gas Concentration.

6.2.1 Sampling Probes. Use Pyrex or stainless steel sampling probes of sufficient length to reach the traverse points calculated according to EPA Method 1 (appendix A to 40 CFR part 60).

6.2.2 Sampling Line. Use a heated Teflon sampling line to transport the sample to the analytical instrument.

6.2.3 Sampling Pump. Use a sampling pump capable of extracting sufficient sample from the duct and transporting to the analytical instrument.

6.2.4 Sample Conditioning System. Use a particulate filter sufficient to protect the sampling pump and analytical instrument. At the discretion of the tester and depending on the equipment used and the moisture content of the exhaust gas, it may be necessary to further condition the sample by removing moisture using a condenser.

6.2.5 Analytical Instrument. Use one of the following analytical instruments.

6.2.5.1 Spectrometer. Use an infrared spectrometer designed to measuring SF_6 tracer gas and capable of meeting or exceeding the specifications of this procedure. An FTIR meeting the specifications of Method 320 in appendix A to 40 CFR part 63 may be used.

6.2.5.2 GC/ECD. Use a GC/ECD designed to measure SF_6 tracer gas and capable of meeting or exceeding the specifications of this procedure.

6.2.6 Recorder. At a minimum, use a recorder with linear strip chart. An automated data acquisition system (DAS) is recommended.

6.3 Exhaust Gas Flow Rate Measurement. Use equipment specified for EPA Methods 2, 3, and 4 in appendix A to 40 CFR part 60 for measuring flow rate of exhaust gas at the inlet to the control device.

7.0 Reagents and Standards

7.1 Tracer Gas. Use SF_6 as the tracer gas. The manufacturer of the SF_6 tracer gas should provide a recommended shelf life for the tracer gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. A gas mixture of SF_6 diluted with nitrogen should be used; based on experience and calculations, pure SF_6 gas is not necessary to conduct tracer gas testing. Select a concentration and flow rate that is appropriate for the analytical instrument's detection limit, the MML, and the exhaust gas flow rate from the enclosure (see section 8.1.1). You may use a tracer gas other than SF_6 with the prior approval of the EPA Administrator. If you use an approved tracer gas other than SF_6, all references to SF_6 in this protocol instead refer to the approved tracer gas.

7.2 Calibration Gases. The SF_6 calibration gases required will be dependent on the selected MML and the appropriate span selected for the test. Commercial cylinder gases certified by the manufacturer to be accurate to within 1 percent of the certified label value are preferable, although cylinder gases certified by the manufacturer to 2 percent accuracy are allowed. Additionally, the manufacturer of the SF_6 calibration gases should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. Another option allowed by this method is for the tester to obtain high concentration certified cylinder gases and then use a dilution system meeting the requirements of EPA Method 205, 40 CFR part 51, appendix M, to make multi-level calibration gas standards. Low-level, mid-level, and high-level calibration gases will be required. The MML must be above the low-level standard, the high-level standard must be no more than four times the low-level standard, and the mid-level standard must be approximately halfway between the high- and low-level standards. See section 12.1 for an example calculation of this procedure.

Note: If using an FTIR as the analytical instrument, the tester has the option of following the CTS procedures of Method 320 in appendix A to 40 CFR part 63; the calibration standards (and procedures) specified in Method 320 may be used in lieu of the calibration standards and procedures in this protocol.

7.2.1 Zero Gas. High purity nitrogen.

7.2.2 Low-Level Calibration Gas. An SF_6 calibration gas in nitrogen with a concentration equivalent to 20 to 30 percent of the applicable span value.

7.2.3 Mid-Level Calibration Gas. An SF_6 calibration gas in nitrogen with a concentration equivalent to 45 to 55 percent of the applicable span value.

7.2.4 High-Level Calibration Gas. An SF_6 calibration gas in nitrogen with a concentration equivalent to 80 to 90 percent of the applicable span value.

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Test Design.

8.1.1 Determination of Minimum Tracer Gas Flow Rate.

8.1.1.1 Determine (via design calculations or measurements) the approximate flow rate of the exhaust gas through the enclosure, actual cubic feet per minute (acfm).

8.1.1.2 Calculate the minimum tracer gas injection rate necessary to assure a detectable SF_6 concentration at the exhaust gas measurement point (see section 12.1 for calculation).

8.1.1.3 Select a flow meter for the injection system with an operating range appropriate for the injection rate selected.

8.1.2 Determination of the Approximate Time to Reach Equilibrium.

8.1.2.1 Determine the volume of the enclosure.

8.1.2.2 Calculate the air changes per minute of the enclosure by dividing the approximate exhaust flow rate (8.1.1.1 above) by the enclosed volume (8.1.2.1 above).

8.1.2.3 Calculate the time at which the tracer concentration in the enclosure will achieve approximate equilibrium. Divide 3 by the air changes per minute (8.1.2.2 above) to establish this time. This is the approximate length of time for the system to come to equilibrium. Concentration equilibrium occurs when the tracer concentration in the enclosure stops changing as a function of time for a constant tracer release rate. Because the press is continuously cycling, equilibrium may be exhibited by a repeating, but stable, cyclic pattern rather than a single constant concentration value. Assure sufficient tracer gas is available to allow the system to come to equilibrium, and to sample for a minimum of 20 minutes and repeat the procedure for a minimum of three test runs. Additional test runs may be required based on the results of the DQO and LCL analyses described in 40 CFR part 63, subpart KK, appendix A.

8.1.3 Location of Injection Points. This method requires a minimum of three tracer gas injection points. The injection points should be located within leak prone, volatile organic compound/hazardous air pollutant (VOC/HAP) producing areas around the press, or horizontally within 12 inches of the defined equipment. One potential configuration of the injection points is depicted in Figure 1. The effect of wind, exfiltration through the building envelope, and air flowing through open building doors should be considered when locating tracer gas injection points within the enclosure. The injection points should also be located at a vertical elevation equal to the VOC/HAP generating zones. The injection points should not be located beneath obstructions that would prevent a natural dispersion of the gas. Document the selected injection points in a drawing(s).

8.1.4 Location of Flow Measurement and Tracer Sampling. Accurate CD inlet gas flow rate measurements are critical to the success of this procedure. Select a measurement location meeting the criteria of EPA Method 1 (40 CFR part 60, appendix A), Sampling and Velocity Traverses for Stationary Sources. Also, when selecting the measurement location, consider whether stratification of the tracer gas is likely at the location (*e.g.*, do not select a location immediately after a point of air in-leakage to the duct).

8.2 Tracer Gas Release. Release the tracer gas at a calculated flow rate (see section 12.1 for calculation) through a minimum of three injection manifolds located as described above in 8.1.3. The tracer gas delivery lines must be routed into the enclosure and attached to the manifolds without violating the integrity of the enclosure.

8.3 Pretest Measurements.

8.3.1 Location of Sampling Point(s). If stratification is not suspected at the measurement location, select a single sample point located at the centroid of the CD inlet duct or at a point no closer to the CD inlet duct walls than 1 meter. If stratification is suspected, establish a ''measurement line'' that passes through the centroidal area and in the direction of any expected stratification. Locate three traverse points at 16.7, 50.0 and 83.3 percent of the measurement line and sample from each of these three points during each run, or follow the procedure in section 8.3.2 to verify whether stratification does or does not exist.

8.3.2 Stratification Verification. The presence or absence of stratification can be verified by using the following procedure. While the facility is operating normally, initiate tracer gas release into the enclosure. For rectangular ducts, locate at least nine sample points in the cross section such that the sample points are the centroids of similarly-shaped, equal area divisions of the cross section. Measure the tracer gas concentration at each point. Calculate the mean value for all sample points. For circular ducts, conduct a 12-point traverse (*i.e.*, six points on each of the two perpendicular

diameters) locating the sample points as described in 40 CFR part 60, appendix A, Method 1. Perform the measurements and calculations as described above. Determine if the mean pollutant concentration is more than 10 percent different from any single point. If so, the cross section is considered to be stratified, and the tester may not use a single sample point location, but must use the three traverse points at 16.7, 50.0, and 83.3 percent of the entire measurement line. Other traverse points may be selected, provided that they can be shown to the satisfaction of the Administrator to provide a representative sample over the stack or duct cross section.

8.4 CD Inlet Gas Flow Rate Measurements. The procedures of EPA Methods 1–4 (40 CFR part 60, appendix A) are used to determine the CD inlet gas flow rate. Molecular weight (Method 3) and moisture (Method 4) determinations are only required once for each test series. However, if the test series is not completed within 24 hours, then the molecular weight and moisture measurements should be repeated daily. As a minimum, velocity measurements are conducted according to the procedures of Methods 1 and 2 before and after each test run, as close to the start and end of the run as practicable. A velocity measurement between two runs satisfies both the criterion of ''after'' the run just completed and ''before'' the run to be initiated. Accurate exhaust gas flow rate measurements are critical to the success of this procedure. If significant temporal variations of flow rate are anticipated during the test run under normal process operating conditions, take appropriate steps to accurately measure the flow rate during the test. Examples of steps that might be taken include: (1) conducting additional velocity traverses during the test run; or (2) continuously monitoring a single point of average velocity during the run and using these data, in conjunction with the pre- and post-test traverses, to calculate an average velocity for the test run.

8.5 Tracer Gas Measurement Procedure.

8.5.1 Calibration Error Test. Immediately prior to the emission test (within 2 hours of the start of the test), introduce zero gas and high-level calibration gas at the calibration valve assembly. Zero and calibrate the analyzer according to the manufacturer's procedures using, respectively, nitrogen and the calibration gases. Calculate the predicted response for the low-level and mid-level gases based on a linear response line between the zero and high-level response. Then introduce the low-level and mid-level calibration gases successively to the measurement system. Record the analyzer responses for the low-level and mid-level calibration gases and determine the differences between the measurement system responses and the predicted responses using the equation in section 12.3. These differences must be less than 5 percent of the respective calibration gas value. If not, the measurement system must be replaced or repaired prior to testing. No adjustments to the measurement system shall be conducted after the calibration and before the drift determination (section 8.5.4). If adjustments are necessary before the completion of the test series, perform the drift checks prior to the required adjustments and repeat the calibration following the adjustments. If multiple electronic ranges are to be used, each additional range must be checked with a mid-level calibration gas to verify the multiplication factor.

Note: If using an FTIR for the analytical instrument, you may choose to follow the pretest preparation, evaluation, and calibration procedures of Method 320 (section 8.0) (40 CFR part 63, appendix A) in lieu of the above procedure.

8.5.2 Response Time Test. Conduct this test once prior to each test series. Introduce zero gas into the measurement system at the calibration valve assembly. When the system output has stabilized, switch quickly to the high-level calibration gas. Record the time from the concentration change to the measurement system response equivalent to 95 percent of the step change. Repeat the test three times and average the results.

8.5.3 SF_6 Measurement. Sampling of the enclosure exhaust gas at the inlet to the CD should begin at the onset of tracer gas release. If necessary, adjust the tracer gas injection rate such that the measured tracer gas concentration at the CD inlet is within the spectrometer's calibration range (*i.e.*, between the MML and the span value). Once the tracer gas concentration reaches equilibrium, the SF_6 concentration should be measured using the infrared spectrometer continuously for at least 20 minutes per run. Continuously record (*i.e.*, record at least once per minute) the concentration. Conduct at least three test runs. On the recording chart, in the data acquisition system, or in a log book, make a note of periods of process interruption or cyclic operation such as the cycles of the hot press operation. Table 1 to this appendix summarizes the physical measurements required for the enclosure testing.

Note: If a GC/ECD is used as the analytical instrument, a continuous record (at least once per minute) likely will not be possible; make a minimum of five injections during each test run. Also, the minimum test run duration criterion of 20 minutes applies.

8.5.4 Drift Determination. Immediately following the completion of the test run, reintroduce the zero and mid-level calibration gases, one at a time, to the measurement system at the calibration valve assembly. (Make no adjustments to the measurement system until both the zero and calibration drift checks are made.) Record the analyzer responses for the zero and mid-level calibration gases and determine the difference between the instrument responses for each gas prior to and after the emission test run using the equation in section 12.4. If the drift values exceed the specified limits (section 13), invalidate the test results preceding the check and repeat the test following corrections to the measurement system. Alternatively, recalibrate the test measurement system as in section 8.5.1 and report the results using both sets of calibration data (*i.e.*, data determined prior to the test period and data determined following the test period). Note: If using an FTIR for the analytical instrument, you may choose to follow the post-test calibration procedures of Method 320 in appendix A to 40 CFR part 63 (section 8.11.2) in lieu of the above procedures.

8.6 Ambient Air Sampling (Optional). Sampling the ambient air surrounding the enclosure is optional. However, taking these samples during the capture efficiency testing will identify those areas of the enclosure that may be performing less efficiently.

8.6.1 Location of Ambient Samples Outside the Enclosure (Optional). In selecting the sampling locations for collecting samples of the ambient air surrounding the enclosure, consider potential leak points, the direction of the release, and laminar flow characteristics in the area surrounding the enclosure. Samples should be collected from all sides of the enclosure, downstream in the prevailing room air flow, and in the operating personnel occupancy areas.

8.6.2 Collection of Ambient Samples (Optional). During the tracer gas release, collect ambient samples from the area surrounding the enclosure perimeter at predetermined location using disposable syringes or some other type of containers that are non-absorbent, inert, and that have low permeability (*i.e.*, polyvinyl fluoride film or polyester film sample bags or polyethylene, polypropylene, nylon or glass bottles). The use of disposable syringes allows samples to be injected directly into a gas chromatograph. Concentration measurements taken around the perimeter of the enclosure provide evidence of capture performance and will assist in the identification of those areas of the enclosure that are performing less efficiently.

8.6.3 Analysis and Storage of Ambient Samples (Optional). Analyze the ambient samples using an analytical instrument calibrated and operated according to the procedures in this appendix or ASTM E 260 and ASTM E 697. Samples may be analyzed immediately after a sample is taken, or they may be stored for future analysis. Experience has shown no degradation of concentration in polypropylene syringes when stored for several months as long as the needle or syringe is plugged. Polypropylene syringes should be discarded after one use to eliminate the possibility of cross contamination of samples.

9.0 Quality Control

9.1 Sampling, System Leak Check. A sampling system leak check should be conducted prior to and after each test run to ensure the integrity of the sampling system.

9.2 Zero and Calibration Drift Tests.

Section	Quality control measure	Effect
8.5.4	Zero and calibration drift tests	Ensures that bias introduced by drift in the measurement system output during the run is no greater than 3 percent of span.

10.0 Calibration and Standardization

10.1 Control Device Inlet Air Flow Rate Measurement Equipment. Follow the equipment calibration requirements specified in Methods 2, 3, and 4 (appendix A to 40 CFR part 60) for measuring the velocity, molecular weight, and moisture of the control device inlet air.

10.2 Tracer Gas Injection Rate. A dry gas volume flow meter, mass flow meter, or orifice can be used to measure the tracer gas injection flow rate. The selected flow measurement device must have an accuracy of greater than ± 5 percent at the field operating range. Prior to the test, verify the calibration of the selected flow measurement device using either a wet test meter, spirometer, or liquid displacement meter as the calibration device. Select a minimum of two flow rates to bracket the expected field operating range of the flow meter. Conduct three calibration runs at each of the two selected flow rates. For each run, note the exact quantity of gas as determined by the calibration standard and the gas volume indicated by the flow meter. For each flow rate, calculate the average percent difference of the indicated flow compared to the calibration standard.

10.3 Spectrometer. Follow the calibration requirements specified by the equipment manufacturer for infrared spectrometer measurements and conduct the pretest calibration error test specified in section 8.5.1. Note: if using an FTIR analytical instrument see Method 320, section 10 (appendix A to 40 CFR part 63).

10.5 Gas Chromatograph. Follow the pre-test calibration requirements specified in section 8.5.1.

10.4 Gas Chromatograph for Ambient Sampling (Optional). For the optional ambient sampling, follow the calibration requirements specified in section 8.5.1 or ASTM E 260 and E 697 and by the equipment manufacturer for gas chromatograph measurements.

11.0 Analytical Procedures

The sample collection and analysis are concurrent for this method (see section 8.0).

12.0 Calculations and Data Analysis

12.1 Estimate MML and Span. The MML is the minimum measurement level. The selection of this level is at the discretion of the tester. However, the MML must be higher than the low-level calibration standard, and the tester must be able to measure at this level with a precision of ≤10 percent. As an example, select the MML as 10 times the instrument's published detection limit. The detection limit of one instrument is 0.01 parts per million by volume (ppmv). Therefore, the MML would be 0.10 ppmv. Select the low-level calibration standard as 0.08 ppmv. The high-level standard would be four times the low-level standard or 0.32 ppmv. A reasonable mid-level standard would then be 0.20 ppmv (halfway between the low-level standard and the high-level standard). Finally, the span value would be approximately 0.40 ppmv (the high-level value is 80 percent of the span). In this example, the following MML, calibration standards, and span values would apply:

MML = 0.10 ppmv
Low-level standard = 0.08 ppmv
Mid-level standard = 0.20 ppmv
High-level standard = 0.32 ppmv
Span value = 0.40 ppmv

12.2 Estimate Tracer Gas Injection Rate for the Given Span. To estimate the minimum and maximum tracer gas injection rate, assume a worst case capture efficiency of 80 percent, and calculate the tracer gas flow rate based on known or measured parameters. To estimate the minimum tracer gas injection rate, assume that the MML concentration (10 times the IR detection limit in this example) is desired at the measurement location. The following equation can be used to estimate the minimum tracer gas injection rate:

$$((Q_{T\text{-}MIN} \times 0.8)/Q_E) \times (C_T \div 100) \times 10^6 = MML$$

$$Q_{T\text{-}MIN} = 1.25 \times MML \times (Q_E/C_T) \times 10^{-4}$$

Where:

$Q_{T\text{-}MIN}$ = minimum volumetric flow rate of tracer gas injected, standard cubic feet per minute (scfm);
Q_E = volumetric flow rate of exhaust gas, scfm;
C_T = Tracer gas (SF_6) concentration in gas blend, percent by volume;
MML = minimum measured level, ppmv = 10 × IR_{DL} (for this example);
IR_{DL} = IR detection limit, ppmv.

Standard conditions: 20°C, 760 millimeters of mercury (mm Hg).

To estimate the maximum tracer gas injection rate, assume that the span value is desired at the measurement location. The following equation can be used to estimate the maximum tracer gas injection rate:

$$((Q_{T\text{-}MAX} \times 0.8)/Q_E) \times (C_T \div 100) \times 10^6 = \text{span value}$$

$$Q_{T\text{-}MAX} = 1.25 \times \text{span value} \times (Q_E/C_T) \times 10^{-4}$$

Where:

$Q_{T\text{-}MAX}$ = maximum volumetric flow rate of tracer gas injected, scfm;
Span value = instrument span value, ppmv.

The following example illustrates this calculation procedure:

Find the range of volumetric flow rate of tracer gas to be injected when the following parameters are known:

Q_E = 60,000 scfm (typical exhaust gas flow rate from an enclosure);
C_T = 2 percent SF_6 in nitrogen;
IR_{DL} = 0.01 ppmv (per manufacturer's specifications);
MML = 10 × IR_{DL} = 0.10 ppmv;
Span value = 0.40 ppmv;
Q_T = ?

Minimum tracer gas volumetric flow rate:

$$Q_{T\text{-}MIN} = 1.25 \times MML \times (Q_E/C_T) \times 10^{-4}$$

$$Q_{T\text{-}MIN} = 1.25 \times 0.10 \times (60{,}000/2) \times 10^{-4} = 0.375 \text{ scfm}$$

Maximum tracer gas volumetric flow rate:

$$Q_{T\text{-}MAX} = 1.25 \times \text{span value} \times (Q_E/C_T) \times 10^{-4}$$

$$Q_{T\text{-}MAX} = 1.25 \times 0.40 \times (60{,}000/2) \times 10^{-4} = 1.5 \text{ scfm}$$

In this example, the estimated total volumetric flow rate of the two percent SF_6 tracer gas injected through the manifolds in the enclosure lies between 0.375 and 1.5 scfm.

12.3 Calibration Error. Calculate the calibration error for the low-level and mid-level calibration gases using the following equation:

$$Err = |C_{std} - C_{meas}| \div C_{std} \times 100$$

Where:

Err = calibration error, percent;
C_{std} = low-level or mid-level calibration gas value, ppmv;
C_{meas} = measured response to low-level or mid-level concentration gas, ppmv.

12.4 Calibration Drift. Calculate the calibration drift for the zero and low-level calibration gases using the following equation:

$$D = |C_{initial} - C_{final}| \div C_{span} \times 100$$

Where:

D = calibration drift, percent;
$C_{initial}$ = low-level or mid-level calibration gas value measured before test run, ppmv;
C_{final} = low-level or mid-level calibration gas value measured after test run, ppmv;
C_{span} = span value, ppmv.

12.5 Calculate Capture Efficiency. The equation to calculate enclosure capture efficiency is provided below:

$$CE = (SF_{6\text{-}CD} \div SF_{6\text{-}INJ}) \times 100$$

Where:

CE = capture efficiency;
$SF_{6\text{-}CD}$ = mass of SF_6 measured at the inlet to the CD;
$SF_{6\text{-}INJ}$= mass of SF_6 injected from the tracer source into the enclosure.

Calculate the CE for each of the initial three test runs. Then follow the procedures outlined in section 12.6 to calculate the overall capture efficiency.

12.6 Calculate Overall Capture Efficiency. After calculating the capture efficiency for each of the initial three test runs, follow the procedures in 40 CFR part 63, subpart KK, appendix A, to determine if the results of the testing can be used in determining compliance with the requirements of the rule. There are two methods that can be used: the DQO and LCL methods. The DQO method is described in section 3 of 40 CFR part 63, subpart KK, appendix A, and provides a measure of the precision of the capture efficiency testing conducted. Section 3 of 40 CFR part 63, subpart KK, appendix A, provides an example calculation using results from a facility. If the DQO criteria are met using the first set of three test runs, then

the facility can use the average capture efficiency of these test results to determine the capture efficiency of the enclosure. If the DQO criteria are not met, then the facility can conduct another set of three runs and run the DQO analysis again using the results from the six runs *OR* the facility can elect to use the LCL approach.

The LCL method is described in section 4 of 40 CFR part 63, subpart KK, appendix A, and provides sources that may be performing much better than their regulatory requirement, a screening option by which they can demonstrate compliance. The LCL approach compares the 80 percent lower confidence limit for the mean measured CE value to the applicable regulatory requirement. If the LCL capture efficiency is higher than the applicable limit, then the facility is in initial compliance and would use the LCL capture efficiency as the capture efficiency to determine compliance. If the LCL capture efficiency is lower than the applicable limit, then the facility must perform additional test runs and re-run the DQO or LCL analysis.

13.0 Method Performance

13.1 Measurement System Performance Specifications.

13.1.1 Zero Drift. Less than ± 3 percent of the span value.

13.1.2 Calibration Drift. Less than ± 3 percent of the span value.

13.1.3 Calibration Error. Less than ± 5 percent of the calibration gas value.

13.2 Flow Measurement Specifications. The mass flow, volumetric flow, or critical orifice control meter used should have an accuracy of greater than ± 5 percent at the flow rate used.

13.3 Calibration and Tracer Gas Specifications. The manufacturer of the calibration and tracer gases should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 References

1. 40 CFR part 60, appendix A, EPA Method 1—Sample and velocity traverses for stationary sources.

2. 40 CFR part 60, appendix A, EPA Method 2—Determination of stack gas velocity and volumetric flow rate.

3. 40 CFR part 60, appendix A, EPA Method 3—Gas analysis for the determination of dry molecular weight.

4. 40 CFR part 60, appendix A, EPA Method 4—Determination of moisture content in stack gases.

5. SEMI F15–93 Test Method for Enclosures Using Sulfur Hexafluoride Tracer Gas and Gas Chromotography.

6. Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Directors, Revised Capture Efficiency Guidance for Control of Volatile Organic Compound Emissions, February 7, 1995. (That memorandum contains an attached technical document from Candace Sorrell, Emission Monitoring and Analysis Division, ''Guidelines for Determining Capture Efficiency,'' January 9, 1994).

7. Technical Systems Audit of Testing at Plant ''C,'' EPA–454/R–00–26, May 2000.

8. Material Safety Data Sheet for SF_6 Air Products and Chemicals, Inc. Website: www3.airproducts.com. October 2001.

17.0 Tables, Diagrams, Flowcharts, and Validation Data

TABLE 1 TO APPENDIX A TO SUBPART DDDD OF 40 CFR PART 63.—SUMMARY OF CRITICAL PHYSICAL MEASUREMENTS FOR ENCLOSURE TESTING

Measurement	Measurement instrumentation	Measurement frequency	Measurement site
Tracer gas injection rate	Mass flow meter, volumetric flow meter or critical orifice.	Continuous	Injection manifolds (cylinder gas).
Tracer gas concentration at control device inlet.	Infrared Spectrometer or GC/ECD	Continuous (at least one reading per minute) for a minimum of 20 minutes.	Inlet duct to the control device (outlet duct of enclosure).
Volumetric air flow rate	EPA Methods 1, 2, 3, 4 (40 CFR part 60, appendix A). • Velocity sensor (Manometer/Pitot tube). • Thermocouple • Midget Impinger sampler • Orsat or Fyrite	Each test run for velocity (minimum); Daily for moisture and molecular weight.	Inlet duct to the control device (outlet duct of enclosure).

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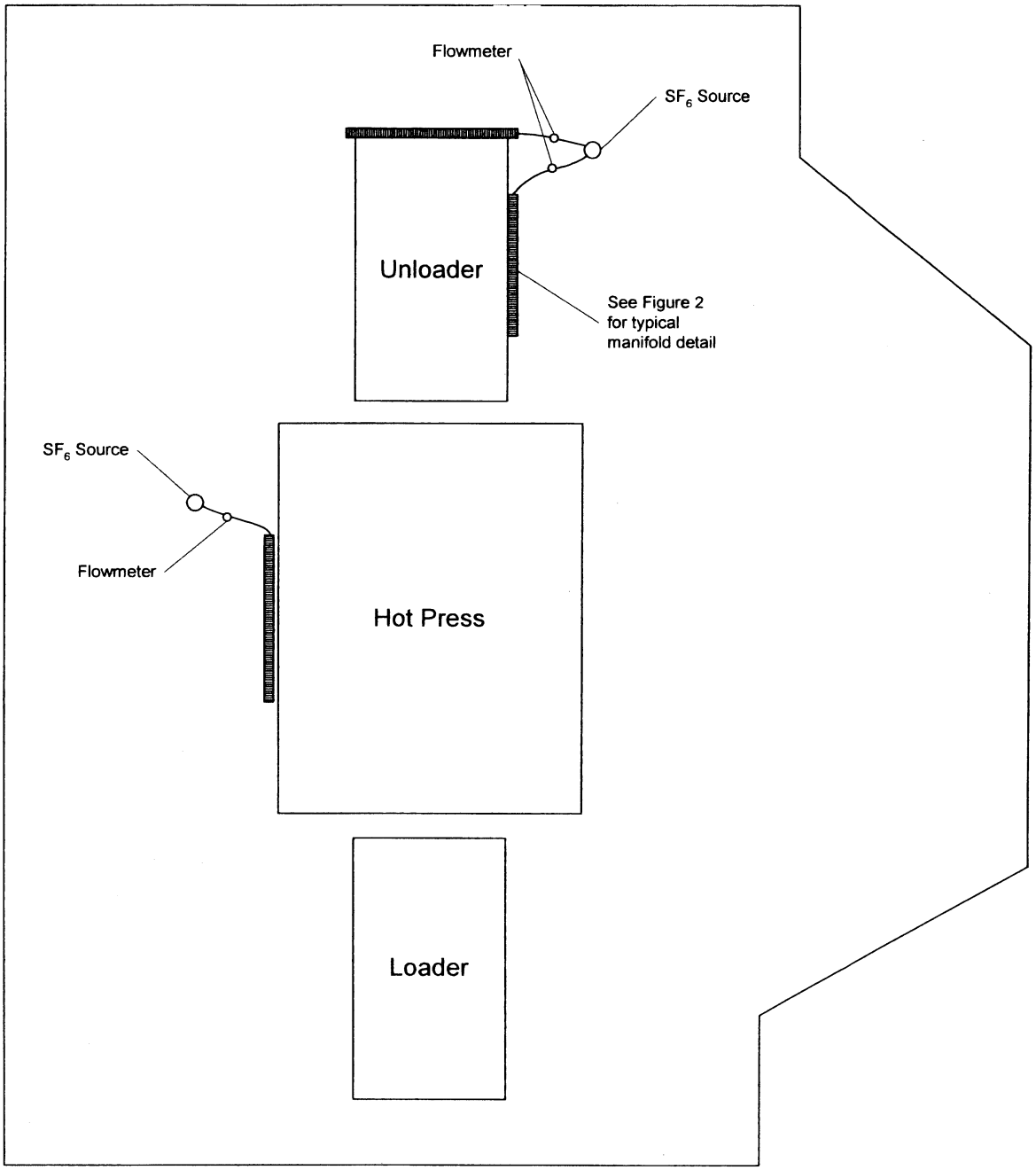

Figure 1. Plan view schematic of hot press and enclosure showing SF_6 manifold locations.

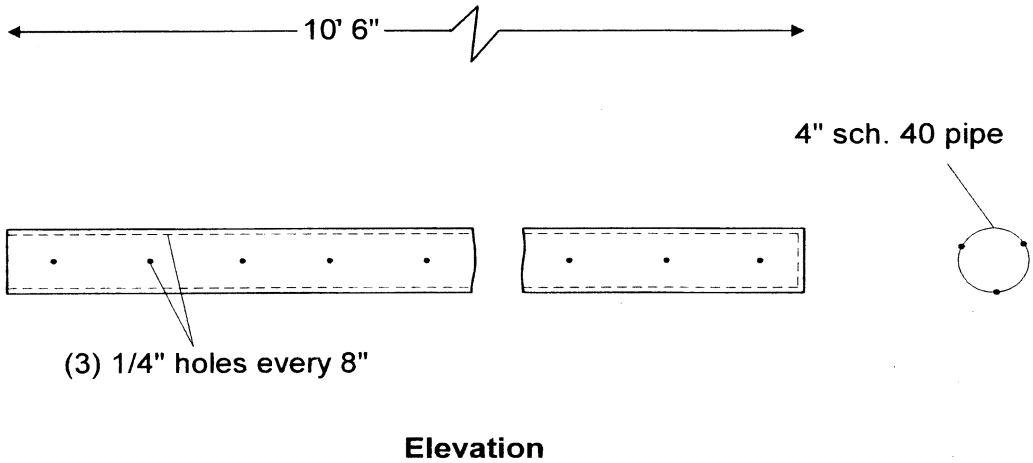

Figure 2. Schematic detail for manifold system for SF_6 injection.

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Appendix B to Subpart DDDD of Part 63—Methodology and Criteria for Demonstrating That an Affected Source Is Part of the Low-Risk Subcategory of Plywood and Composite Wood Products Manufacturing Affected Sources

1. Purpose

This appendix provides the methodology and criteria for demonstrating that your affected source is part of the low-risk subcategory of plywood and composite wood products (PCWP) manufacturing facilities. You must demonstrate that your affected source is part of the low-risk subcategory using either a look-up table analysis (based on the look-up tables included in this appendix) or using a site-specific risk assessment performed according to the criteria specified in this appendix. This appendix also specifies how and when you must obtain approval of the low-risk demonstrations for your affected source and how to ensure that your affected source remains in the low-risk subcategory of PCWP facilities.

2. Who Is Eligible To Demonstrate That They Are Part of the Low-Risk Subcategory of PCWP Affected Sources?

Each new, reconstructed, or existing affected source at a PCWP manufacturing facility may demonstrate that they are part of the low-risk subcategory of PCWP affected sources. Section 63.2232 of 40 CFR part 63, subpart DDDD, defines the affected source and explains which affected sources are new, existing, or reconstructed.

3. What Parts of My Affected Source Have To Be Included in the Low-Risk Demonstration?

Every process unit that is part of the PCWP affected source (as defined in § 63.2292 of 40 CFR part 63, subpart DDDD) and that emits one or more hazardous air pollutant (HAP) listed in Table 1 to this appendix must be included in the low-risk demonstration. You are not required to include process units outside of the affected source in the low-risk demonstration.

4. What Are the Criteria for Determining if My Affected Source Is Low Risk?

(a) Determine the individual HAP emission rates from each process unit within the affected source using the procedures specified in section 5 of this appendix.

(b) Perform chronic and acute risk assessments using the dose-response values, as specified in paragraphs (b)(1) through (3) of this section.

(1) For a look-up table analysis or site-specific chronic inhalation risk assessment, you should use the cancer and noncancer dose-response values listed on the Environmental Protection Agency (EPA) Air Toxics Web site (*http://www.epa.gov/ttn/atw/toxsource/summary.html*) to estimate carcinogenic and noncarcinogenic chronic inhalation risk, respectively.

(2) For site-specific acute inhalation risk assessment, you should use the acute exposure guidance level (AEGL–1) value for acrolein and the acute reference exposure level (REL) value for formaldehyde for estimating acute inhalation risk found at *http://www.epa.gov/ttn/atw/toxsource/summary.html.*

(3) You may use dose-response values more health-protective than those posted on the EPA Air Toxics Web site (*http://www.epa.gov/ttn/atw/toxsource/summary.html*) to facilitate ongoing certification (as required in section 13 of this appendix) that your affected source remains in the low-risk subcategory.

(c) Demonstrate that your affected source is part of the low-risk subcategory by estimating the maximum impacts of your affected source using the methods described in either section 6 of this appendix (look-up table analysis) or section 7 of this appendix (site-specific risk assessment) and comparing the results to the low-risk criteria presented in the applicable section.

5. How Do I Determine HAP Emissions From My Affected Source?

(a) You must conduct HAP emissions tests according to the requirements in paragraphs (b) through (h) of this section and the methods specified in Table 2 to this appendix for every process unit within the affected source that emits one or more of the HAP listed in Table 1 to this appendix. You must test the process units at your affected source to obtain the emission rates in pounds per hour (lb/hr) for each of the pollutants listed in Table 1 to this appendix.

(b) *Periods when emissions tests must be conducted.*

(1) You must not conduct emissions tests during periods of startup, shutdown, or malfunction, as specified in 40 CFR 63.7(e)(1).

(2) You must test under worst-case operating conditions as defined in this appendix. You must describe your worst-case operating conditions in your performance test report for the process and control systems (if applicable) and explain why the conditions are worst-case.

(c) *Number of test runs.* You must conduct three separate test runs for each test required in this section, as specified in 40 CFR 63.7(e)(3). Each test run must last at least 1 hour except for: testing of a temporary total enclosure (TTE) conducted using Methods 204A through 204F in 40 CFR part 51, appendix M, which require three separate test runs of at least 3 hours each; and testing of an enclosure conducted using the alternative tracer gas method in appendix A to 40 CFR part 63, subpart DDDD, which requires a minimum of three separate runs of at least 20 minutes each.

(d) *Sampling locations.* Sampling sites must be located at the emission point and prior to any releases to the atmosphere. For example, at the outlet of the control device, including wet control devices, and prior to any releases to the atmosphere.

(e) *Collection of monitoring data for HAP control devices.* During the emissions test, you must collect operating parameter monitoring system or continuous emissions

monitoring system (CEMS) data at least every 15 minutes during the entire emissions test and establish the site-specific operating requirements (including the parameter limits or total hydrocarbon (THC) concentration limit) in Table 2 to 40 CFR part 63, subpart DDDD, using data from the monitoring system and the procedures specified in paragraphs (k) through (o) of § 63.2262 of subpart DDDD of 40 CFR part 63.

(f) *Nondetect data.* You may treat emissions of an individual HAP as zero if all of the test runs result in a nondetect measurement and the conditions in paragraphs (1) and (2) of this section are met for the relevant test method. Otherwise, nondetect data (as defined in § 63.2292 of 40 CFR part 63, subpart DDDD) for individual HAP must be treated as one-half of the method detection limit.

(1) The method detection limit is less than or equal to 1 part per million by volume, dry (ppmvd) for pollutant emissions measured using Method 320 in appendix A to 40 CFR part 63; or the NCASI Method IM/CAN/WP–99.02 (incorporated by reference (IBR), see 40 CFR 63.14(f)); or ASTM D6348–03 (IBR, see 40 CFR 63.14(b)).

(2) For pollutants measured using Method 29 in appendix A to 40 CFR part 60, you analyze samples using atomic absorption spectroscopy (AAS).

(g) For purposes of your low-risk demonstration, you must assume that 17 percent of your total chromium measured using EPA Method 29 in appendix A to 40 CFR part 60 is chromium VI. You must assume that 65 percent of your total nickel measured using EPA Method 29 in appendix A to 40 CFR part 60 is nickel subsulfide.

(h) You may use emission rates higher than your measured emission rates (*e.g.*, emissions rates 10 times your measured emission rate) to facilitate ongoing certification (as required in section 13 of this appendix) that your affected source remains in the low-risk subcategory.

6. How Do I Conduct a Look-Up Table Analysis?

Use the look-up tables (Tables 3 and 4 to this appendix) to demonstrate that your affected source is part of the low-risk subcategory, following the procedures in paragraphs (a) through (d) of this section.

(a) Using the emission rate of each HAP required to be included in your low-risk demonstration (measured according to section 5 of this appendix), calculate your total toxicity-weighted carcinogen and noncarcinogen emission rates for each of your process units using Equations 1 and 2 of this appendix, respectively.

$$\mathrm{TWCER} = \sum\left(\mathrm{ER_i} \times \mathrm{URE_i}\right) \qquad \text{(Eq. 1)}$$

TWCER = Toxicity-weighted carcinogenic emission rate for each process unit (1b/hr)/(μg/m³)

$\mathrm{ER_i}$ = Emission rate of pollutant i (lb/hr)

$\mathrm{URE_i}$ = Unit risk estimate for pollutant i, 1 per microgram per cubic meter (μg/m³)$^{-1}$

$$\mathrm{TWNER} = \sum\left(\mathrm{ER_i}/\mathrm{RfC_i}\right) \qquad \text{(Eq. 2)}$$

TWNER = Toxicity-weighted noncarcinogenic emission rate for each process unit (lb/hr)/(μg/m³)

$\mathrm{ER_i}$ = Emission rate of pollutant i (lb/hr)

$\mathrm{RfC_i}$ = Reference concentration for pollutant i, micrograms per cubic meter (μg/m³)

(b) *Cancer risk.* Calculate the total toxicity-weighted carcinogen emission rate for your affected source by summing the toxicity-weighted carcinogen emission rates for each of your process units. Identify the appropriate maximum allowable toxicity-weighted carcinogen emission rate from Table 3 to this appendix for your affected source using the average stack height of your emission points and the minimum distance between any emission point at the affected source and the property boundary. If one or both of these values do not match the exact values in the lookup table, then use the next lowest table value. (Note: If your average stack height is less than 5 meters (m), you must use the 5 m row.) Your affected source is considered low risk for carcinogenic effects if your toxicity-weighted carcinogen emission rate, determined using the methods specified in this appendix, does not exceed the values specified in Table 3 to this appendix.

(c) *Noncancer risk.* Calculate the total central nervous system (CNS) and respiratory target organ specific toxicity-weighted noncarcinogen emission rate for your affected source by summing the toxicity-weighted emission rates for each of your process units. Identify the appropriate maximum allowable toxicity-weighted noncarcinogen emission rate from Table 4 to this appendix for your affected source using the average stack height of your emission points and the minimum distance between any emission point at the affected source and the property boundary. If one or both of these values do not match the exact values in the lookup table, then use the next lowest table value. (Note: If your average stack height is less than 5 m, you must use the 5 m row.) Your affected source is considered low risk for noncarcinogenic effects if your toxicity-weighted noncarcinogen emission rate, determined using the methods specified in this appendix, does not exceed the values specified in Table 4 to this appendix.

(d) *Low-risk demonstration.* The EPA will approve your affected source as eligible for membership in the low-risk subcategory of PCWP affected sources if it determines that: (1) your affected source is low risk for both carcinogenic and noncarcinogenic effects using the look-up table analysis described in this section; and (2) you meet the criteria specified in section 11 of this appendix.

7. How Do I Conduct a Site-Specific Risk Assessment?

(a) Perform a site-specific risk assessment following the procedures specified in this section. You may use any scientifically-accepted peer-reviewed assessment methodology for your site-specific risk assessment. An example of one approach to performing a site-specific risk assessment for air toxics that may be appropriate for your affected source can be found in the ''Air Toxics Risk Assessment Guidance Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document.'' You may obtain a copy of the ''Air Toxics Risk Assessment Reference Library'' through EPA's air toxics Web Site at *www.epa.gov/ttn/atw.*

(b) At a minimum, you site-specific risk assessment must:

(1) Estimate the long-term inhalation exposures through the estimation of annual or multi-year average ambient concentrations for the chronic portion of the assessment.

(2) Estimate the acute exposures for formaldehyde and acrolein through the estimation of maximum 1-hour average ambient concentrations for the acute portion of the assessment.

(3) Estimate the inhalation exposure of the individual most exposed to the affected source's emissions.

(4) Estimate the individual risks over a 70-year lifetime for the chronic cancer risk assessment.

(5) Use site-specific, quality-assured data wherever possible.

(6) Use health-protective default assumptions wherever site-specific data are not available.

(7) Contain adequate documentation of the data and methods used for the assessment so that it is transparent and can be reproduced by an experienced risk assessor and emission measurement expert.

(c) Your site-specific risk assessment need not:

(1) Assume any attenuation of exposure concentrations due to the penetration of outdoor pollutants into indoor exposure areas.

(2) Assume any reaction or deposition of the emitted pollutants during transport from the emission point to the point of exposure.

(d) Your affected source is considered low risk for carcinogenic chronic inhalation effects if your site-specific risk assessment demonstrates that maximum off-site individual lifetime cancer risk at a location where people live is less than 1 in 1 million.

(e) Your affected source is considered low risk for noncarcinogenic chronic inhalation effects if your site-specific risk assessment demonstrates that every maximum off-site target-organ specific hazard index (TOSHI), or appropriate set of site-specific hazard indices based on similar or complementary mechanisms of action that are reasonably likely to be additive at low dose or dose-response data for mixtures, at a location where people live is less than or equal to 1.0.

(f) Your affected source is considered low risk for noncarcinogenic acute inhalation effects if your site-specific risk assessment demonstrates that the maximum off-site acute hazard quotients for both acrolein and formaldehyde are less than or equal to 1.0.

(g) The EPA will approve your affected source as eligible for membership in the low-risk subcategory of PCWP affected sources if it determines that: (1) your affected source is low risk for all of the applicable effects listed in paragraphs (d) through (f) of this section; and (2) you meet the criteria specified in section 11 of this appendix.

8. What Information Must I Submit for the Low-Risk Demonstration?

(a) Your low-risk demonstration must include at a minimum the information

specified in paragraphs (a)(1) through (5) of this section and the information specified in either paragraph (b) or (c) of this section.

(1) Identification of each process unit at the affected source.

(2) Stack parameters for each emission point including, but not limited to, the parameters listed in paragraphs (a)(2)(i) through (iv) below:

(i) Emission release type.

(ii) Stack height, stack area, stack gas temperature, and stack gas exit velocity.

(iii) Plot plan showing all emission points, nearby residences, and fenceline.

(iv) Identification of any HAP control devices used to reduce emissions from each process unit.

(3) Emission test reports for each pollutant and process unit based on the test methods specified in Table 2 to this appendix, including a description of the process parameters identified as being worst case.

(4) Identification of the dose-response values used in your risk analysis (look-up table analysis or site-specific risk assessment), according to section 4(b) of this appendix.

(5) Identification of the controlling process factors (including, but not limited to, production rate, annual emission rate, type of control devices, process parameters documented as worst-case conditions during the emissions testing used for your low-risk demonstration) that will become Federally enforceable permit conditions used to show that your affected source remains in the low-risk subcategory.

(b) If you use the look-up table analysis in section 6 of this appendix to demonstrate that your affected source is low risk, your low-risk demonstration must contain at a minimum the information in paragraphs (a) and (b)(1) through (5) of this section.

(1) Identification of the stack heights for each emission point included in the calculation of average stack height.

(2) Identification of the emission point with the minimum distance to the property boundary.

(3) Calculations used to determine the toxicity-weighted carcinogen and noncarcinogen emission rates according to section 6(a) of this appendix.

(4) Comparison of the values in the look-up tables (Tables 3 and 4 to this appendix) to your toxicity-weighted emission rates for carcinogenic and noncarcinogenic HAP.

(c) If you use a site-specific risk assessment as described in section 7 of this appendix to demonstrate that your affected source is low risk (for carcinogenic and noncarcinogenic chronic inhalation and acute inhalation risks), your low-risk demonstration must contain at a minimum the information in paragraphs (a) and (c)(1) through (8) of this section.

(1) Identification of the risk assessment methodology used.

(2) Documentation of the fate and transport model used.

(3) Documentation of the fate and transport model inputs, including the information described in paragraphs (a)(1) through (4) of this section converted to the dimensions required for the model and all of the following that apply: meteorological data; building, land use, and terrain data; receptor locations and population data; and other facility-specific parameters input into the model.

(4) Documentation of the fate and transport model outputs.

(5) Documentation of exposure assessment and risk characterization calculations.

(6) Comparison of the maximum off-site individual lifetime cancer risk at a location where people live to 1 in 1 million, as required in section 7(d) of this appendix for carcinogenic chronic inhalation risk.

(7) Comparison of the maximum off-site TOSHI for respiratory effects and CNS effects at a location where people live to the limit of 1.0, as required in section 7(e) of this appendix for noncarcinogenic chronic inhalation risk.

(8) Comparison of the maximum off-site acute inhalation hazard quotient (HQ) for both acrolein and formaldehyde to the limit of 1.0, as required in section 7(f) of this appendix for noncancinogenic acute inhalation effects.

(d) The EPA may request any additional information it determines is necessary or appropriate to evaluate an affected source's low-risk demonstration.

9. Where Do I Send My Low-Risk Demonstration?

You must submit your low-risk demonstration to the EPA for review and approval. Send your low-risk demonstration either via e-mail to *REAG@EPA.GOV* or via U.S. mail or other mail delivery service to U.S. EPA, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), Attn: Group Leader, Research Triangle Park, NC 27711, and send a copy to your permitting authority. Your affected source is not part of the low-risk subcategory of PCWP facilities unless and until EPA notifies you that it has determined that you meet the requirements of section 11 of this appendix.

10. When Do I Submit My Low-Risk Demonstration?

(a) If you have an existing affected source, you must complete and submit for approval your low-risk demonstration no later than July 31, 2006.

(b) If you have an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before September 28, 2004, then you must complete and submit for approval your low-risk demonstration no later than July 31, 2006. If you have an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP after September 28, 2004, then you must complete and submit for approval your low-risk demonstration no later than 12 months after you become a major source or after initial startup of your affected source as a major source, whichever is later.

(c) If you have a new or reconstructed affected source you must conduct the emission tests specified in section 5 of this appendix upon initial startup and use the results of these emissions tests to complete and submit your low-risk demonstration within 180 days following your initial startup date. If your new or reconstructed affected source starts up before September 28, 2004, for EPA to find that you are included in the low-risk subcategory, your low-risk demonstration must show that you were eligible to meet the criteria in section 11 of this appendix no later than September 28, 2004. If your new or reconstructed source starts up after September 28, 2004, for EPA to find that you are included in the low-risk subcategory, your low-risk demonstration must show that you were eligible to meet the criteria in section 11 of this appendix upon initial startup of your affected source. Affected sources that are not part of the low-risk subcategory by October 1, 2007, must comply with the requirements of 40 CFR part 63, subpart DDDD. Affected sources may not request compliance extensions from the permitting authority if they fail to demonstrate they are part of the low-risk subcategory or to request additional time to install controls to become part of the low-risk subcategory.

11. How Does My Affected Source Become Part of the Low-Risk Subcategory of PCWP Facilities?

To be included in the low-risk subcategory, EPA must find that you meet the criteria in paragraphs (a) and (b) of this section. Unless and until EPA finds that you meet these criteria, your affected source is subject to the applicable compliance options, operating requirements, and work practice requirements in 40 CFR part 63, subpart DDDD.

(a) Your demonstration of low risk must be approved by EPA.

(b) Following EPA approval, the parameters that defined your affected source as part of the low-risk subcategory (including, but not limited to, production rate, annual emission rate, type of control devices, process parameters reflecting the emissions rates used for your low-risk demonstration) must be incorporated as federally enforceable terms and conditions into your title V permit. You must submit an application for a significant permit modification to reopen your title V permit to incorporate such terms and conditions according to the procedures and schedules of 40 CFR part 71 or the EPA-approved program in effect under 40 CFR part 70, as applicable.

12. What Must I Do To Ensure My Affected Source Remains in the Low-Risk Subcategory of PCWP Facilities?

You must meet the requirements in Table 2 to 40 CFR part 63, subpart DDDD, for each HAP control device used at the time when you completed your low-risk demonstration. You must monitor and collect data according to § 63.2270 of subpart DDDD to show continuous compliance with your control device operating requirements. You must demonstrate continuous compliance with the control device operating requirements that apply to you by collecting and recording the monitoring system data listed in Table 2 to 40 CFR part 63, subpart DDDD for the process unit according to §§ 63.2269(a), (b), and (d) of subpart DDDD; and reducing the monitoring system data to the specified averages in units of the applicable requirement according to calculations in § 63.2270 of subpart DDDD; and maintaining

the average operating parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established according to section 5(e) of this appendix.

13. What Happens If the Criteria Used in the Risk Determination Change?

(a) You must certify with each annual title V permit compliance certification that the basis for your affected source's low-risk determination has not changed. You must submit this certification to the permitting authority. You must consider the changes in paragraphs (a)(1) through (5) of this section.

(1) Process changes that increase HAP emissions, including, but not limited to, a production rate increase, an annual emission rate increase, a change in type of control device, changes in process parameters reflecting emissions rates used for your approved low-risk demonstration.

(2) Population shifts, such as if people move to a different location such that their risks from the affected source increase.

(3) Unit risk estimate increases posted on the EPA website *(http://www.epa.gov/ttn/atw/toxsource/summary.html)* for the pollutants included in Table 1 to this appendix.

(4) Reference concentration changes posted on the EPA website *(http://www.epa.gov/ttn/atw/toxsource/summary.html)* for the pollutants included in Table 1 to this appendix.

(5) Acute dose-response value for formaldehyde or acrolein changes.

(b) If your affected source commences operating outside of the low-risk subcategory, it is no longer part of the low-risk subcategory. You must be in compliance with 40 CFR part 63, subpart DDDD as specified in paragraphs (b)(1) through (3) of this section. Operating outside of the low-risk subcategory means that one of the changes listed in paragraphs (a)(1) through (5) of this section has occurred and that the change is inconsistent with your affected source's title V permit terms and conditions reflecting EPA's approval of the parameters used in your low risk demonstration.

(1) You must notify the permitting authority as soon as you know, or could have reasonably known, that your affected source is or will be operating outside of the low-risk subcategory.

(2) You must be in compliance with the requirements of 40 CFR part 63, subpart DDDD as specified in paragraph (b)(2)(i) or (ii) of this section, whichever applies.

(i) If you are operating outside of the low-risk subcategory due to a change described in paragraph (a)(1) of this section, then you must comply with 40 CFR part 63, subpart DDDD beginning on the date when your affected source commences operating outside the low-risk subcategory.

(ii) If you are operating outside of the low-risk subcategory due to a change described in paragraphs (a)(2) through (5) of this section, then you must comply with 40 CFR part 63, subpart DDDD no later than three years from the date your affected source commences operating outside the low-risk subcategory.

(3)(i) You must conduct performance tests no later than 180 calendar days after the applicable date specified in paragraph (b)(2) of this section.

(ii) You must conduct initial compliance demonstrations that do not require performance tests 30 calendar days after the applicable date specified in paragraph (b)(2) of this section.

(iii) For the purposes of affected sources affected by this section, you must refer to the requirements in paragraph (b) of this section instead of the requirements of § 63.2233 when complying with 40 CFR part 63, subpart DDDD.

14. What Records Must I Keep?

(a) You must keep records of the information used in developing the low-risk demonstration for your affected source, including all of the information specified in section 8 of this appendix.

(b) You must keep records demonstrating continuous compliance with the operating requirements for control devices.

(c) For each THC CEMS, you must keep the records specified in § 63.2282(c) of 40 CFR part 63, subpart DDDD.

15. Definitions

The definitions in § 63.2292 of 40 CFR part 63, subpart DDDD, apply to this appendix. Additional definitions applicable for this appendix are as follows:

Direct-fired process unit means a process unit that is heated by the passing of combustion exhaust directly through the process unit such that the process material is contacted by the combustion exhaust.

Emission point means an individual stack or vent from a process unit that emits HAP required for inclusion in the low-risk demonstration specified in this appendix. Process units may have multiple emission points.

Hazard Index (HI) means the sum of more than one hazard quotient for multiple substances and/or multiple exposure pathways.

Hazard Quotient (HQ) means the ratio of the predicted media concentration of a pollutant to the media concentration at which no adverse effects are expected. For inhalation exposures, the HQ is calculated as the air concentration divided by the reference concentration (RfC).

Look-up table analysis means a risk screening analysis based on comparing the toxicity-weighted HAP emission rate from the affected source to the maximum allowable toxicity-weighted HAP emission rates specified in Tables 3 and 4 to this appendix.

Reference Concentration (RfC) means an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

Target organ specific hazard index (TOSHI) means the sum of hazard quotients for individual chemicals that affect the same organ or organ system (*e.g.*, respiratory system, central nervous system).

Unit Risk Estimate (URE) means the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 microgram per cubic meter (&µg/m^3) in air.

Worst-case operating conditions means operation of a process unit during emissions testing under the conditions that result in the highest HAP emissions or that result in the emissions stream composition (including HAP and non-HAP) that is most challenging for the control device if a control device is used. For example, worst case conditions could include operation of the process unit at maximum throughput, at its highest temperature, with the wood species mix likely to produce the most HAP, and/or with the resin formulation containing the greatest HAP.

TABLE 1.—TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—HAP THAT MUST BE INCLUDED IN THE DEMONSTRATION OF ELIGIBILITY FOR THE LOW-RISK PCWP SUBCATEGORY

For your analysis of the following effects . . .	You must include the following HAP . . .
(1) Chronic inhalation carcinogenic effects	Acetaldehyde, benzene, arsenic, beryllium, cadmium, chromium, lead, nickel, and formaldehyde.
(2) Chronic inhalation noncarcinogenic respiratory effects	Acetaldehyde, acrolein, cadmium, formaldehyde, and methylene diphenyl diisocyanate (MDI).
(3) Chronic inhalation noncarcinogenic CNS effects	Manganese, lead, and phenol.
(4) Acute inhalation	Acrolein and formaldehyde.

TABLE 2 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—EMISSION TEST METHODS

For . . .	You must . . .	Using . . .
(1) Each process unit	Select sampling ports' location and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A (as appropriate).
(2) Each process unit	Determine velocity and volumetric flow rate;	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 (as appropriate).
(3) Each process unit	Conduct gas molecular weight analysis	Method 3, 3A, or 3B in appendix A to 40 CFR part 60.
(4) Each process unit	Measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60.
(5) Each process unit	Measure emissions of the following HAP: acetaldehyde, acrolein,[1] formaldehyde, and phenol.	NCASI Method IM/CAN/WP–99.02 (IBR, see 40 CFR 63.14(f)); OR Method 320 in appendix A to 40 CFR part 63; OR ASTM D6348–03 (IBR, see 40 CFR 63.14(b)) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.
(6) Each process unit	Measure emissions of benzene[1]	Method 320 in appendix A to 40 CFR part 63; OR ASTM D6348–03 (IBR, see 40 CFR 63.14(b)) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.
(7) Each press that processes board containing MDI resin.	Measure emissions of MDI	Method 320 in appendix A to 40 CFR part 63; OR Conditional Test Method (CTM) 031 which is posted on http://www.epa.gov/ttn/emc/ctm.html
(8) Each direct-fired process unit	Measure emissions of the following HAP metals: arsenic, beryllium, cadmium, chromium, lead, manganese, and nickel.	Method 29 in appendix A to 40 CFR part 60.
(9) Each reconstituted wood product press or reconstituted wood product board cooler with a HAP control device.	Meet the design specifications included in the definition of wood products enclosure in § 63.2292 of subpart DDDD of 40 CFR part 63. Or Determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M to determine capture efficiency (except for wood products enclosures as defined in § 63.2292). Enclosures that meet the definition of wood products enclosure or that meet Method 204 requirements for a PTE are assumed to have a capture efficiency of 100 percent. Enclosures that do not meet either the PTE requirements or design criteria for a wood products enclosure must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to subpart DDDD.
(10) Each reconstituted wood product press or reconstituted wood product board cooler.	Determine the percent capture efficiency	A TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to subpart DDDD.
(11) Each process unit with a HAP control device.	Establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in Table 2 to subpart DDDD.	Data from the parameter monitoring system or THC CEMS and the applicable performance test method(s).

[1] If EPA approves that your process unit will not emit detectable amounts of benzene or acrolein, that unit may be excluded from the benzene and/or acrolein (as applicable) testing requirement in this table.

TABLE 3 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—MAXIMUM ALLOWABLE TOXICITY-WEIGHTED CARCINOGEN EMISSION RATE (LB/HR)/(μG/M 3)

Stack height (m)	Distance to Nearest Residence (m)											
	0	50	100	150	200	250	500	1000	1500	2000	3000	5000
5	8.72E–07	8.72E–07	8.72E–07	9.63E–07	1.25E–06	1.51E–06	2.66E–06	4.25E–06	4.39E–06	4.39E–06	4.39E–06	5.00E–06
10	2.47E–06	2.47E–06	2.47E–06	2.47E–06	2.47E–06	2.61E–06	3.58E–06	5.03E–06	5.89E–06	5.89E–06	5.89E–06	6.16E–06
20	5.81E–06	5.81E–06	5.81E–06	5.81E–06	5.81E–06	5.81E–06	5.90E–06	7.39E–06	8.90E–06	9.97E–06	9.97E–06	1.12E–05
30	7.74E–06	7.74E–06	7.74E–06	7.74E–06	7.74E–06	7.74E–06	8.28E–06	9.49E–06	1.17E–05	1.35E–05	1.55E–05	1.61E–05
40	9.20E–06	9.20E–06	9.20E–06	9.20E–06	9.20E–06	9.20E–06	9.24E–06	1.17E–05	1.34E–05	1.51E–05	1.98E–05	2.22E–05
50	1.02E–05	1.02E–05	1.02E–05	1.02E–05	1.02E–05	1.02E–05	1.02E–05	1.36E–05	1.53E–05	1.66E–05	2.37E–05	2.95E–05
60	1.13E–05	1.13E–05	1.13E–05	1.13E–05	1.13E–05	1.13E–05	1.13E–05	1.53E–05	1.76E–05	1.85E–05	2.51E–05	3.45E–05
70	1.23E–05	1.23E–05	1.23E–05	1.23E–05	1.23E–05	1.23E–05	1.23E–05	1.72E–05	2.04E–05	2.06E–05	2.66E–05	4.07E–05
80	1.34E–05	1.34E–05	1.34E–05	1.34E–05	1.34E–05	1.34E–05	1.34E–05	1.92E–05	2.15E–05	2.31E–05	2.82E–05	4.34E–05
100	1.52E–05	1.52E–05	1.52E–05	1.52E–05	1.52E–05	1.52E–05	1.52E–05	1.97E–05	2.40E–05	2.79E–05	3.17E–05	4.49E–05
200	1.76E–05	1.76E–05	1.76E–05	1.76E–05	1.76E–05	1.76E–05	1.76E–05	2.06E–05	2.94E–05	3.24E–05	4.03E–05	5.04E–05

MIR=1E–06
Emission rates in table expressed as equivalents normalized to theoretical HAP with URE = $1(\mu g/m^3)^{-1}$

TABLE 4 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—MAXIMUM ALLOWABLE TOXICITY-WEIGHTED NONCARCINOGEN EMISSION RATE ((LB/HR)/μG/M3))

Stack height (m)	Distance to Property Boundary (m)											
	0	50	100	150	200	250	500	1000	1500	2000	3000	5000
5	2.51E–01	2.51E–01	3.16E–01	3.16E–01	3.16E–01	3.16E–01	3.16E–01	3.46E–01	4.66E–01	6.21E–01	9.82E–01	1.80E+00
10	5.62E–01	5.62E–01	5.62E–01	5.62E–01	5.62E–01	5.62E–01	5.62E–01	5.70E–01	6.33E–01	7.71E–01	1.13E+00	1.97E+00
20	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.68E+00	1.83E+00	2.26E+00	3.51E+00
30	2.36E+00	2.36E+00	2.36E+00	2.36E+00	2.36E+00	2.36E+00	2.53E+00	3.04E+00	3.04E+00	3.33E+00	4.45E+00	5.81E+00
40	3.11E+00	3.11E+00	3.11E+00	3.11E+00	3.11E+00	3.11E+00	3.42E+00	4.04E+00	5.07E+00	5.51E+00	6.39E+00	9.63E+00
50	3.93E+00	3.93E+00	3.93E+00	3.93E+00	3.93E+00	3.93E+00	4.49E+00	4.92E+00	6.95E+00	7.35E+00	8.99E+00	1.25E+01
60	4.83E+00	4.83E+00	4.83E+00	4.83E+00	4.83E+00	4.83E+00	5.56E+00	6.13E+00	7.80E+00	1.01E+01	1.10E+01	1.63E+01
70	5.77E+00	5.77E+00	5.77E+00	5.77E+00	5.77E+00	5.77E+00	6.45E+00	7.71E+00	8.83E+00	1.18E+01	1.36E+01	1.86E+01
80	6.74E+00	6.74E+00	6.74E+00	6.74E+00	6.74E+00	6.74E+00	7.12E+00	9.50E+00	1.01E+01	1.29E+01	1.72E+01	2.13E+01
100	8.87E+00	8.87E+00	8.87E+00	8.87E+00	8.87E+00	8.87E+00	8.88E+00	1.19E+01	1.37E+01	1.55E+01	2.38E+01	2.89E+01
200	1.70E+01	1.70E+01	1.70E+01	1.70E+01	1.70E+01	1.70E+01	1.70E+01	2.05E+01	2.93E+01	3.06E+01	4.02E+01	4.93E+01

HI=1.
Emission rates in table expressed in lbs/hr as equivalents normalized to theoretical HAP with RfC = 1.0 $\mu g/m^3$.

PART 429—[AMENDED]

■ 1. The authority citation for part 429 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(a), (b), and (c) and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the ''Act''); 33 U.S.C. 1911, 1314(b), (c), (e), and (g), 1316(b) and (c), 1917(b) and (c), and 1961; 86 Stat. 815, Pub. L. 92–500; 91 Stat. 1567, Pub L. 95–217.

■ 2. Section 429.11 is amended by revising paragraph (c) to read as follows:

§ 429.11 General definitions.

* * * * *

(c) The term ''process wastewater'' specifically excludes non-contact cooling water, material storage yard runoff (either raw material or processed wood storage), boiler blowdown, and wastewater from washout of thermal oxidizers or catalytic oxidizers, wastewater from biofilters, or wastewater from wet electrostatic precipitators used upstream of thermal oxidizers or catalytic oxidizers installed by facilities covered by subparts B, C, D or M to comply with the national emissions standards for hazardous air pollutants (NESHAP) for plywood and composite wood products (PCWP) facilities (40 CFR part 63, subpart DDDD). For the dry process hardboard, veneer, finishing, particleboard, and sawmills and planing mills subcategories, fire control water is excluded from the definition.

* * * * *

[FR Doc. 04–6298 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
July 30, 2004

Part V

The President

Proclamation 7803—Parents' Day, 2004

Proclamation 7804—Anniversary of the Americans with Disabilities Act, 2004

Federal Register
Vol. 69, No. 146
Friday, July 30, 2004

Presidential Documents

Title 3—

The President

Proclamation 7803 of July 23, 2004

Parents' Day, 2004

By the President of the United States of America

A Proclamation

Parents are a source of hope, help, stability, and love for their children. Parents also teach children important values like courage, compassion, self-reliance, reverence, integrity, and respect for others. As we celebrate Parents' Day, we recognize the important contributions of America's parents and renew our commitment to standing with our families to help them raise healthy, responsible children.

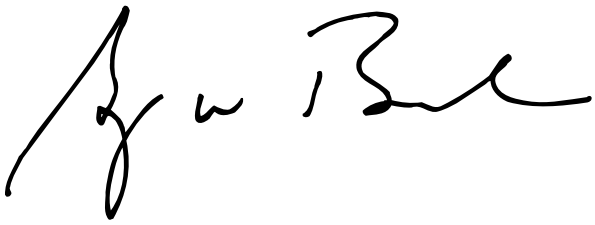
Parenthood is a privilege and a great joy that comes with great responsibility. Mothers and fathers play the vital roles of provider, nurturer, disciplinarian, counselor, advocate, educator, and motivator. They offer unconditional love and help their children to realize their dreams. As parents work to send the right messages to our young people, they shape the character and future of our Nation.

To help strengthen American families and encourage parents' active involvement in the lives of their children, my Administration is committed to promoting healthy marriages and responsible fatherhood. We are providing information to parents on early childhood education and development and supporting community-based parenting education programs. We are also providing parents with more options in educating their children and more opportunities to adopt young boys and girls in need.

On Parents' Day, we honor America's mothers and fathers for their guidance, support, and unconditional love for their children. The tireless efforts of parents, stepparents, adoptive parents, and foster parents make our Nation stronger and help build a better future for all our citizens.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States and consistent with Public Law 103–362, as amended, do hereby proclaim Sunday, July 25, 2004, as Parents' Day. I encourage all Americans to express their love, respect, and appreciation to parents across our Nation. I also call upon citizens to observe this day with appropriate programs, ceremonies, and activities.

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



[FR Doc. 04–17577
Filed 7–29–04; 9:09 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7804 of July 26, 2004

Anniversary of the Americans with Disabilities Act, 2004

By the President of the United States of America

A Proclamation

The Americans with Disabilities Act of 1990 (ADA) marked a milestone in our Nation's quest to guarantee the civil rights of all citizens. The ADA is a success story that has strengthened the foundation for an America where we celebrate the talents and abilities of every person.

On the 14th anniversary of this landmark legislation, we recognize the important progress the ADA has brought about for our citizens and our Nation. Today, individuals with disabilities are better able to develop meaningful skills, engage in productive work, and participate fully in society. Yet, our work is not finished. The millions of Americans with disabilities continue to face both physical barriers and false perceptions. Removing those obstacles requires a determined and focused commitment to the goals of the ADA: equality of opportunity, economic self-sufficiency, full participation, and independent living.

My Administration continues its work to achieve these goals. My New Freedom Initiative, announced in February 2001, sets out a comprehensive strategy for the full integration of people with disabilities into all aspects of American life. The Department of Justice has established the ADA Business Connection to build partnerships between the business community and people with disabilities. This program helps increase voluntary compliance with the ADA and brings individuals with disabilities into the mainstream of our economy. Through Project Civic Access, we have reached agreements with cities and towns across the country to ensure that people with disabilities are integrated into community life. In addition, I have signed executive orders that remove barriers to equal opportunities faced by people with disabilities.

On July 22, 2004, I signed an Executive Order that makes government agencies responsible for properly taking into account agency employees and customers with disabilities in emergency preparedness planning and coordination with other government entities. To help coordinate this effort, the Executive Order establishes the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities.

I also signed an Executive Order on February 24, 2004, to improve transportation for people who are transportation-disadvantaged, including people with disabilities. This order helps Federally assisted community transportation services provide seamless, comprehensive, and accessible transportation services to people who rely on transportation services for their lives and livelihood.

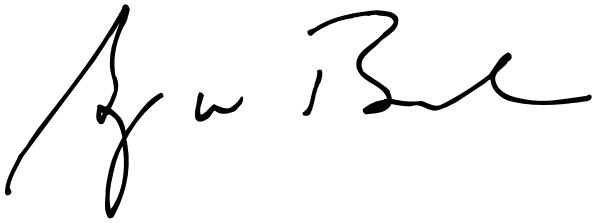
My Administration has also begun implementing the recommendations of the New Freedom Commission on Mental Health. The Commission was established by Executive Order and its report lays out steps that can be taken to improve mental health services and support for people of all ages with mental illness.

By striving to ensure that no American is denied access to employment, education, cultural activities, or community life because of a disability, we strengthen our Nation. Through these and other efforts, we will continue

to build on the progress of the ADA, and, by doing so, hold fast to our Nation's faith in the promise and potential of every person.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 26, 2004, as a day in celebration of the 14th Anniversary of the Americans with Disabilities Act. I call upon all Americans to celebrate the contributions people with disabilities make to America and to renew our commitment to upholding the fundamental principles of the Americans with Disabilities Act.

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



[FR Doc. 04–17439
Filed 7–29–04; 9:09 am]
Billing code 3195–01–P

Federal Register

Friday,
July 30, 2004

Part VI

The President

Executive Order 13350—Termination of Emergency Declared in Executive Order 12722 With Respect to Iraq and Modification of Executive Order 13290, Executive Order 13303, and Executive Order 13315

Federal Register
Vol. 69, No. 146
Friday, July 30, 2004

Presidential Documents

Title 3—

The President

Executive Order 13350 of July 29, 2004

Termination of Emergency Declared in Executive Order 12722 With Respect to Iraq and Modification of Executive Order 13290, Executive Order 13303, and Executive Order 13315

By the authority vested in me as President by the Constitution and 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.*)(NEA), 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, have determined that the situation that gave rise to the declaration of a national emergency with respect to Iraq in Executive Order 12722 of August 2, 1990, has been significantly altered by the removal of the regime of Saddam Hussein and other developments. I hereby terminate the national emergency declared in Executive Order 12722, revoke that Executive Order and Executive Order 12724 of August 9, 1990, Executive Order 12734 of November 14, 1990, Executive Order 12743 of January 18, 1991, Executive Order 12751 of February 14, 1991, and Executive Order 12817 of October 21, 1992, that are based on that national emergency. I hereby amend Executive Order 13290 of March 20, 2003, so that the authorities therein remain in effect based on the national emergency I declared in Executive Order 13303 of May 22, 2003, and expanded in Executive Order 13315 of August 28, 2003. At the same time, and in order to take additional steps to deal with the national emergency that I declared in Executive Order 13303, and expanded in Executive Order 13315, with respect to the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative and economic institutions in Iraq, I hereby order:

Section 1. Pursuant to section 202(a) of the NEA (50 U.S.C. 1622(a)), termination of the national emergency declared in Executive Order 12722 shall not affect any action taken or proceeding pending but not finally concluded or determined as of the effective date of this order, any action or proceeding based on any act committed prior to such date, or any rights or duties that matured or penalties that were incurred prior to such date. Pursuant to section 207(a) of IEEPA (50 U.S.C. 1706(a)), and subject to such regulations, orders, directives, or licenses as may be issued pursuant to this order, I hereby determine that the continuation of prohibitions with regard to transactions involving property blocked pursuant to Executive Orders 12722 or 12724 that continues to be blocked as of the effective date of this order is necessary on account of claims involving Iraq.

Sec. 2. The Annex to Executive Order 13315 is replaced and superseded in its entirety by the Annex to this order.

Sec. 3. I hereby amend Executive Order 13290 by removing ''the national emergency declared in Executive Order 12722 of August 2, 1990'' and replacing it with ''the national emergency declared in Executive Order 13303 of March 20, 2003, and expanded in Executive Order 13315 of August 28, 2003''.

Sec. 4. Unless licensed or otherwise authorized pursuant to this order or otherwise consistent with U.S. law, the trade in or transfer of ownership or possession of Iraqi cultural property or other items of archeological, historical, cultural, rare scientific, and religious importance that were illegally removed, or for which a reasonable suspicion exists that they were illegally removed, from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990, is prohibited.

Sec. 5. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by or to persons determined to be subject to the sanctions imposed by Executive Order 13315 or by this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13303, and expanded by Executive Order 13315, or would endanger the Armed Forces of the United States that are engaged in hostilities, and I hereby prohibit such donations as provided in section 1 of Executive Order 13315 as amended by this order.

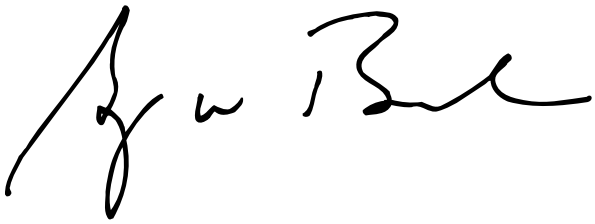
Sec. 6. For those persons listed in the Annex to this order or determined to be subject to Executive Order 13315 or this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13303, and expanded by Executive Order 13315, there need be no prior notice of a listing or determination made pursuant to Executive Order 13315 or this order.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, 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 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 consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to determine subsequent to the issuance of the order, that circumstances no longer warrant the inclusion of a person in the Annex to this order and that such person is therefore no longer covered within the scope of the order.

Sec. 9. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, officers or employees, or any other person.

Sec. 10. This order is effective at 12:01 a.m. eastern daylight time on July 30, 2004. This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,

July 29, 2004.

Billing code 3195–01–P

ANNEX

I. List of 55 Senior Iraqi Officials as previously named in Executive Order 13315:

1. ABD-AL-GHAFUR, Humam abd-al-Khaliq (a.k.a. 'ABD AL-RAHMAN, Humam 'abd al-Khaliq; a.k.a. ABD AL-GHAFUR, Humam Abd al-Khaliq; a.k.a. GHAFUR, Humam Abdel Khaleq Abdel; a.k.a. RASHID, Humam 'abd al-Khaliq) (DOB 1945; POB ar-Ramadi, Iraq; Former Minister of Higher Education and Research; M0018061/104,issued 12 September 1993; nationality Iraqi) (individual)

2. AL-AHMAD, Mahmud Dhiyab (a.k.a. AL-AHMAD, Mahmoud Dhiyab; a.k.a. AL-AHMAD, Mahmoud Diab) (DOB 1953; POB Mosul or Baghdad, Iraq; Former Minister of Interior; nationality Iraqi) (individual)

3. AL-AWADI, Hussein Qaid (Former Ba'th party regional command chairman, Ninawa, nationality Iraqi) (individual)

4. AL-AZZAWI, Hikmat Mizban Ibrahim (DOB 1934; POB Diyala, Iraq; Former Deputy Prime Minister and Finance Minister; nationality Iraqi) (individual)

5. AL-DULAYMI, Latif Nusayyif Jasim (DOB circa 1941; POB Ar-Rashidiya suburb of Baghdad, Iraq; Former Ba'th party military bureau deputy chairman; nationality Iraqi) (individual)

6. AL-DURI, Izzat Ibrahim (a.k.a. Abu Ahmad; a.k.a. Abu Brays) (DOB circa 1942; POB al-Dur, Iraq; Former deputy commander-in-chief of Iraqi military; deputy secretary, former Ba'th party regional command; former vice chairman, Revolutionary Command Council; nationality Iraqi) (individual)

7. AL-JIZRAWI, Taha Yassin Ramadan (a.k.a. RAMADAN, Taha Yasin; a.k.a. RAMADAN, Taha Yassin) (DOB circa 1938; Former vice president; nationality Iraqi) (individual)

8. AL-KHAFAJI, Muhsin Khadr (Former Ba'th party regional command chairman, al-Qadisiyah; nationality Iraqi) (individual)

9. AL-KUBAYSI, Ugla Abid Saqar (a.k.a. Saqr al-Kabisi abd Aqala) (DOB 1944; POB Kubaisi, al-Anbar Governorate, Iraq; Former Ba'th party regional command chairman, Maysan; nationality Iraqi) (individual)

10. AL-MASHHADANI, Saif-al-Din (DOB 1956; POB Baghdad, Iraq; Former Ba'th party regional command chairman, al-Muthanna; nationality Iraqi) (individual)

11. AL-MUHAMMAD, Khamis Sirhan (a.k.a. Dr. Khamis) (Former Ba'th party regional command chairman, Karbala; nationality Iraqi) (individual)

12. AL-NAJIM, Samir abd al-Aziz (DOB 1937; alt. DOB 1938; POB Baghdad, Iraq; Former Ba'th party regional command chairman, East Baghdad; nationality Iraqi) (individual)

13. AL-NAQIB, Zuhair Talib abd-al-Sattar (DOB circa 1948; Former Director, Military Intelligence; nationality Iraqi) (individual)

14. AL-NUMAN, Aziz Salih (DOB 1941; alt. DOB 1945; POB An Nasiriyah, Iraq; Former Ba'th party regional command chairman; nationality Iraqi) (individual)

15. AL-RAWI, Ayad Futayyih Khalifa (DOB 1942; POB Rawah, Iraq; Former Quds Force Chief of Staff; nationality Iraqi) (individual)

16. AL-RAWI, Saif-al-Din Fulayyih Hassan Taha (a.k.a. AL-RAWI, Ayad Futayyih) (DOB 1953; POB Ar Ramadi, al-Anbar Governorate, Iraq; Former Republican Guard chief of staff; nationality Iraqi) (individual)

17. AL-SA'DI, Amir Hamudi Hassan (DOB 5 Apr 1938; POB Baghdad, Iraq; former presidential scientific advisor; Passport No. NO33301/862, issued 17 October 1997, expires 1 October 2005; Passport No. M0003264580; Passport No. H0100009, issued 1 May 2002; nationality Iraqi) (individual)

18. AL-SA'DUN, Muhammad Zimam abd-al-Razzaq (DOB 1942; POB Suq ash-Shuyukh District, Dhi-Qar, Iraq; Former Ba'th party regional chairman, at-Tamim; nationality Iraqi) (individual)

19. AL-SAD'UN, Abd-al-Baqi abd-al-Karim Abdallah (DOB 1947; Former Ba'th party regional command chairman, Diyala; nationality Iraqi) (individual)

20. AL-SALIH, Muhammad Mahdi (a.k.a. SALEH, Mohammed Mahdi) (DOB 1947; alt. DOB 1949; POB al-Anbar Governorate, Iraq; Former Minister of Trade; nationality Iraqi) (individual)

21. AL-TAI, Sultan Hashim Ahmad (DOB circa 1944; POB Mosul, Iraq; Former Minister of Defense; nationality Iraqi) (individual)

22. AL-TIKRITI, Abid Hamid Mahmud (a.k.a. HAMMUD, Abed Mahmoud; a.k.a. MAHMOUD, Col. Abdel Hamid; a.k.a. MAHMUD, Abid Hamid bid Hamid) (DOB circa 1957; POB al-Awja, near Tikrit, Iraq; Saddam Hussein al-Tikriti's presidential secretary and key advisor; nationality Iraqi) (individual)

23. AL-TIKRITI, Ali Hassan al-Majid (a.k.a. al-Kimawi; a.k.a. AL-MAJID, General Ali Hasan; a.k.a. AL-MAJID, General Ali Hassan) (DOB 1943; alt. DOB 1941; POB al-Awja, near Tikrit, Iraq; former presidential advisor and former senior member of Revolutionary Command Council; nationality Iraqi) (individual)

24. AL-TIKRITI, Barzan abd al-Ghafur Sulaiman Majid (a.k.a. AL-GHAFUR, Barzan Razuki abd) (DOB 1960; POB Salah al-Din, Iraq; former commander, Special Republican Guard; nationality Iraqi) (individual)

25. AL-TIKRITI, Barzan Ibrahim Hassan (a.k.a. AL-TAKRITI, Barzan Ibrahim Hassan; a.k.a. AL-TIKRITI, Barzan Ibrahim Hasan), Geneva, Switzerland (DOB 17 Feb 1951; POB Tikrit, Iraq; former presidential advisor; half-brother of Saddam Hussein al-Tikriti; Passport No. M0001666/970; Passport No. NM0000860/114; Passport No. M0009851/1; nationality Iraqi) (individual)

26. AL-TIKRITI, Hamid Raja Shalah (a.k.a. AL-TIKRITI, Hamid Raja Shalah Hassan; a.k.a. AL-TIKRITI, Hamid Raja-Shalah Hassum) (DOB 1950; POB Bayji, Salah al-Din Governorate, Iraq; former air force commander; nationality Iraqi) (individual)

27. AL-TIKRITI, Hani abd-al-Latif Tilfah (DOB circa 1962; POB al-Awja, near Tikrit, Iraq; Former #2 in Special Security Organization; nationality Iraqi) (individual)

28. AL-TIKRITI, Ibrahim Ahmad abd al-Sattar Muhammed (DOB 1943; alt. DOB 1950; alt. DOB 1952; POB Ba'qubah or al-Sumayda/Shirqat, Iraq; former armed forces chief of staff; nationality Iraqi) (individual)

29. AL-TIKRITI, Jamal Mustafa Abdallah Sultan (DOB 4 May 1955; POB al-Samnah, near Tikrit, Iraq; former deputy head of tribal affairs in presidential office; nationality Iraqi) (individual)

30. AL-TIKRITI, Kamal Mustafa Sultan Abdallah (a.k.a. ABDALLAH, Kamal Mustafa; a.k.a. AL-TIKRITI, Kamal Mustafa Abdallah Sultan) (DOB 1952; alt. DOB 4 May 1955, POB Tikrit, Iraq; Former Republican Guard Secretary; formerly led Special Republican Guard and commanded both Republican Guard corps; nationality Iraqi) (individual)

31. AL-TIKRITI, Muzahim Sa'b Hassan (DOB circa 1946; alt. DOB 1949 al-Awja, near Tikrit, Iraq; formerly led Iraq's Air Defense Forces; Former Deputy Director, Organization of Military Industrialization; nationality Iraqi) (individual)

32. AL-TIKRITI, Qusay Saddam Hussein (DOB 1965; alt. DOB 1966; POB Baghdad, Iraq; Saddam Hussein al-Tikriti's second son; formerly oversaw Special Republican Guard, Special Security Organization, and Republican Guard; nationality Iraqi) (individual)

33. AL-TIKRITI, Rafi abd-al-Latif Tilfah (DOB circa 1954; POB Tikrit, Iraq; Former Director, Directorate of General Security; nationality Iraqi) (individual)

34. AL-TIKRITI, Rukan Razuki abd-al-Ghafur Sulaiman (a.k.a. Abu Walid; a.k.a. AL-MAJID, Rukan abd al-Gafur; a.k.a. AL-MAJID, Rukan abdal-Ghaffur Sulayman; a.k.a. AL-MAJID, Rukan Razuqi abd al-Gahfur; a.k.a. AL-TIKRITI, Rukan 'abd al-Ghaffur al-Majid; a.k.a. AL-TIKRITI, Rukan abd al-Ghaffur al-Majid) (DOB 1956, POB Tikrit, Iraq; former head of Tribal Affairs Office in presidential office; nationality Iraqi) (individual)

35. AL-TIKRITI, Sa'd abd-al-Majid al-Faysal (DOB 1944; POB Tikrit, Iraq; Former Ba'th party regional command chairman, Salah al-Din; nationality Iraqi) (individual)

36. AL-TIKRITI, Sab'awi Ibrahim Hassan (a.k.a. AL-TAKRITI, Sabawi Ibrahim Hassan) (DOB 1947; POB Tikrit, Iraq; former presidential advisor; half-brother of Saddam Hussein al-Tikriti; nationality Iraqi) (individual)

37. AL-TIKRITI, Saddam Hussein (a.k.a. Abu Ali; a.k.a. HUSAYN, Saddam; a.k.a. HUSSAIN, Saddam; a.k.a. HUSSEIN, Saddam) (DOB 28 Apr 1937, POB al-Awja, near Tikrit, Iraq; named in UNSCR 1483; Former President; nationality Iraqi) (individual)

38. AL-TIKRITI, Tahir Jalil Habbush (DOB 1950; POB Tikrit, Iraq; former director of Iraqi Intelligence Service; nationality Iraqi) (individual)

39. AL-TIKRITI, Uday Saddam Hussein (a.k.a. HUSSEIN, Udai Saddam) (DOB 1964 alt. DOB 1967; POB Baghdad, Iraq; Saddam Hussein al-Tikriti's eldest son; former leader of paramilitary organization Fedayeen Saddam; nationality Iraqi) (individual)

40. AL-TIKRITI, Walid Hamid Tawfiq (a.k.a. AL-NASIRI, Walid Hamid Tawfiq) (DOB circa 1950, POB Tikrit, Iraq; Former Governor of Basrah; nationality Iraqi) (individual)

41. AL-TIKRITI, Watban Ibrahim Hassan (a.k.a. AL-HASSAN, Watab Ibrahim; a.k.a. AL-TAKRITI, Watban; a.k.a. AL-TIKRITI, Watban Ibrahim al-Hasan) (DOB 1952; POB Tikrit, Iraq; former presidential advisor; half-brother of Saddam Hussein al-Tikriti; nationality Iraqi) (individual)

42. AL-UBAIDI, Amir Rashid Muhammad (DOB 1939; POB Baghdad, Iraq; Former Minister of Oil; nationality Iraqi) (individual)

43. AL-UBAIDI, Ghazi Hammud (DOB 1944; POB Baghdad, Iraq; Former Ba'th party regional command chairman, Wasit; nationality Iraqi) (individual)

44. AL-UBAIDI, Yahia Abdallah (Former Ba'th party regional command chairman, al-Basrah; nationality Iraqi) (individual)

45. AL-YASSIN, Husam Muhammad Amin (DOB 1953; alt. DOB 1958; POB Tikrit, Iraq; head, Former National Monitoring Directorate; nationality Iraqi) (individual)

46. AMMASH, Huda Salih Mahdi (DOB 1953; POB Baghdad, Iraq; member, Former Ba'th party regional command; nationality Iraqi) (individual)

47. AZIZ, Tariq (a.k.a. AZIZ, Tariq Mikhail) (DOB 1 Jul 1936; POB Mosul or Baghdad, Iraq; Former Deputy Prime Minister; Passport No. NO34409/129 (July 1997); nationality Iraqi) (individual)

48. GHALIB, Nayif Shindakh Thamir (Former Ba'th party regional command chairman, an-Najaf; member; Iraqi National Assembly; nationality Iraqi) (individual)

49. GHARIB, Fadil Mahmud (a.k.a. AL-MASHAIKHI, Gharib Muhammad Fazel) (DOB 1944; POB Dujail, Iraq; Former Ba'th party regional command chairman, Babil; former chairman, General Federation of Iraqi Trade Unions; nationality Iraqi) (individual)

50. HADI, Mizban Khadr (DOB 1938; POB Mandali District, Diyala, Iraq; member, Former Ba'th party regional command and Revolutionary Command Council since 1991; nationality Iraqi) (individual)

51. HUWAYSH, Abd-al-Tawab Mullah (DOB 1957; alt. DOB 14 Mar 1942; POB Mosul or Baghdad, Iraq; former deputy prime minister; former director, Organization of Military Industrialization; nationality Iraqi) (individual)

52. KAZIM, Rashid Taan (Former Ba'th party regional command chairman, al-Anbar; nationality Iraqi) (individual)

53. MA'RUF, Taha Muhyi-al-Din (a.k.a. MARUF, Taha, Muhyi al-Din) (DOB 1924; POB Sulaymaniyah, Iraq; Former Vice President; former member of Revolutionary Command Council; nationality Iraqi) (individual)

54. MAHDI, Adil Abdallah (DOB 1945; POB al-Dur, Iraq; Former Ba'th party regional command chairman, Dhi-Qar) (individual)

55. ZUBAIDI, Muhammad Hamza (a.k.a. AL-ZUBAIDI, Mohammed Hamza; a.k.a. AL-ZUBAYDI, Muhammad Hamsa) (DOB 1938; POB Babylon, Babil Governorate, Iraq; former prime minister; nationality Iraqi) (individual)

II. Persons previously designated as subject to Executive Orders 12722 or 12724, or the Iraqi Sanctions Regulations, Title 31, Code of Federal Regulations, who are also determined to be subject to Executive Order 13315 and this order:

1. A.T.E. INTERNATIONAL LTD. (f.k.a. RWR INTERNATIONAL COMMODITIES), 3 Mandeville Place, London, England

2. A.W.A. ENGINEERING LIMITED, 3 Mandeville Place, London, England

3. ABBAS, Abdul Hussein, Italy (individual)

4. ABBAS, Kassim, Lerchesbergring, 23A, D-60598, Frankfurt, Germany (DOB 7 Aug 1956; POB Baghdad, Iraq) (individual)

5. ADMINCHECK LIMITED, 1 Old Burlington Street, London, England

6. ADVANCED ELECTRONICS DEVELOPMENT, LTD., 3 Mandeville Place, London, England

7. AHMAD, Rasem, P.O. Box 1318, Amman, Jordan (individual)

8. AHMAD, Wallid Issa, Iraq (individual)

9. AL-AMIRI, Adnan Talib Hassim, 43 Palace Mansions, Hammersmith, London, England (individual)

10. AL-ARABI TRADING COMPANY LIMITED, Lane 11, Hai Babil, Baghdad District 929, Iraq

11. AL-ATRUSH, Abd al-Wahhab Umar Mirza (a.k.a. AL-ATRUSHI, Abdel Wahab), a former minister of state, Iraq (DOB 1936) (individual)

12. AL-AZAWI, Dafir, Iraq (individual)

13. AL-BAZZAZ, Hikmet Abdallah (a.k.a. AL-BAZAZ, Hikmet Abdullah), Former Minister of Education, Iraq (individual)

14. AL-DAJANI, Leila N.S., P.O. Box 1318, Amman, Jordan (individual)

15. AL-DAJANI, Nadim S., P.O. Box 1318, Amman, Jordan (individual)

16. AL-DAJANI, Sa'ad, P.O. Box 1318, Amman, Jordan (individual)

17. AL-DULAIMI, Khalaf M. M., Baghdad, Iraq (individual)

18. AL-HABOBI, Dr. Safa Haji J. (a.k.a. AL-HABOBI, Dr. Safa; a.k.a. AL-HABUBI, Dr. Safa Hadi Jawad; a.k.a. HABUBI, Dr. Safa Hadi Jawad; a.k.a. HABUBI, Dr. Safa Jawad; a.k.a. JAWAD, Dr. Safa Hadi), Former Minister of Oil, Flat 4D Thorney Court, Palace Gate, Kensington, England; Iraq (DOB 01 Jul 46) (individual)

19. AL-HAMMADI, Hamid Yusif (a.k.a. HAMADI, Hamed Yussef), Former Minister of Culture and Information, Iraq (individual)

20. AL-HASSAN, Anas Malik Dohan (a.k.a. AL-HASSAN, Anas; a.k.a. DOHAN, Anas; a.k.a. DOHAN, Anas Malik; a.k.a. MALIK, Anas), Baghdad, Iraq (individual)

21. AL-HASSAN, Anas Malik Dohan (a.k.a. AL-HASSAN, Anas; a.k.a. DOHAN, Anas; a.k.a. DOHAN, Anas Malik; a.k.a. MALIK, Anas), Jordan (individual)

22. AL-HUWAYSH, Isam Rashid, Former Governor of the Central Bank, Iraq (individual)

23. AL-JABBURI, Sadi Tuma Abbas, Former Adviser to the President for Military Affairs, Iraq (DOB 1939) (individual)

24. AL-KHAFAJI, Sabah, 254 Rue Adolphe Pajeaud, 92160 Antony, France (individual)

25. AL-KHODAIR, Ahmad Hussein (a.k.a. SAMARRAI, Ahmad Husayn Khudayir), Former Minister of Finance, Iraq (DOB 1941) (individual)

26. AL-MAJID, Hussein Kamel Hassan (a.k.a. AL-MAJID, Husayn Kamil Hasan), Former Minister of Industry and Minerals and Advisor to the President, Baghdad, Iraq (DOB 1955) (individual)

27. AL-MALIKI, Shabib Lazem (a.k.a. AL-MALEKI, Shebib Lazim), Former Minister of Justice, Iraq (DOB 1936) (individual)

28. AL-QASIR, Nazar Jumah Ali (a.k.a. AL-QASSIR, Nizar Jomaa Ali), Former Minister of Irrigation, Iraq (individual)

29. AL-RIDA, Karim Hasan (a.k.a. RIDA, Karim Hassan), Former Minister of Agriculture, Iraq (DOB 1944) (individual)

30. AL-RUBA, Dr. Khadim, Managing Director of REAL ESTATE BANK, Iraq (individual)

31. AL-SAHHAF, Muhammad Said Kazim (a.k.a. AL-SAHAF, Mohammed Said), Former Minister of Foreign Affairs, Iraq (DOB 1940) (individual)

32. AL-ZIBARI, Arshad Muhammad Ahmad Muhammad, a former minister of state, Iraq (DOB 1942) (individual)

33. ALAWI, Abdel-Salam Abdel-Rahman (a.k.a. ALLAWI, Salam), General Manager of INDUSTRIAL BANK OF IRAQ, Iraq (individual)

34. ALI, Ali Abdul Mutalib, Germany (individual)

35. ALWAN, Allaidin Hussain (a.k.a. ALWAN, Alla Idin Hussain), Baghdad, Iraq (individual)

36. AMD CO. LTD AGENCY, Al-Tahrir Car Parking Building, Tahrir Sq., Floor 3, Office 33, P.O. Box 8044, Baghdad, Iraq

37. ARAB PETROLEUM ENGINEERING COMPANY LTD., Amman, Jordan

38. ARAB PROJECTS COMPANY S.A. LTD., P.O. Box 1318, Amman, Jordan

39. ARAB PROJECTS COMPANY S.A. LTD., P.O. Box 1972, Riyadh, Saudi Arabia

40. ARAB PROJECTS COMPANY S.A. LTD., P.O. Box 7939, Beirut, Lebanon

41. ARCHI CENTRE I.C.E. LIMITED, 3 Mandeville Place, London, England

42. ARCHICONSULT LIMITED, 128 Buckingham Place, London 5, England

43. ASSOCIATED ENGINEERS, England

44. ATIA, Hachim K., 2 Stratford Place, London W1N 9AE, England (individual)

45. ATIA, Hachim K., Hay Al-Adil, Mahala-645, Zukak-8, No.-39, Baghdad, Iraq (individual)

46. ATIA, Hachim K., Lane 15, Area 902, Hai Al-Wahda, Baghdad, Iraq (individual)

47. ATLAS AIR CONDITIONING COMPANY LIMITED, 55 Roebuck House, Palace Street, London, England

48. ATLAS EQUIPMENT COMPANY LIMITED, 55 Roebuck House, Palace Street, London, England

49. BABIL INTERNATIONAL, Aeroport D'Orly, 94390 Orly Aerogare, France

50. BAROON SHIPPING COMPANY LIMITED, Haven Court, 5 Library Ramp, Gibraltar

51. BAY INDUSTRIES, INC., 10100 Santa Monica Boulevard, Santa Monica, California, U.S.A.

52. BUHLER, Bruno, 57 Rue du Rhone, CH-1204 Geneva, Switzerland (individual)

53. DAGHIR, Ali Ashour, 2 Western Road, Western Green, Thames Ditton, Surrey, England (individual)

54. DOMINION INTERNATIONAL, England

55. DURAND PROPERTIES LIMITED, Haven Court, 5 Library Ramp, Gibraltar

56. ENDSHIRE EXPORT MARKETING, England

57. EUROMAC EUROPEAN MANUFACTURER CENTER SRL, Via Ampere 5, 20052 Monza, Italy

58. EUROMAC TRANSPORTI INTERNATIONAL SRL, Via Ampere 5, 20052 Monza, Italy

59. EUROMAC, LTD., 4 Bishops Avenue, Northwood, Middlesex, England

60. FALCON SYSTEMS, England

61. FARAJ, Samal Majid, Former Minister of Planning, Iraq (individual)

62. FARTRADE HOLDINGS S.A., Switzerland

63. FATTAH, Jum'a Abdul, P.O. Box 1318, Amman, Jordan (individual)

64. H & H METALFORM GMBH, Postfach 1160, Strontianitstrasse 5, 4406 Drensteinfurt, Germany

65. HABIB, Mohammed Turki, Baghdad, Iraq (individual)

66. HELFORD DIRECTORS LIMITED, Haven Court, 5 Library Ramp, Gibraltar

67. I.P.C. INTERNATIONAL LIMITED, England

68. I.P.C. MARKETING LIMITED, England

69. INVESTACAST PRECISION CASTINGS, LTD., 112 City Road, London, England

70. IRAQI ALLIED SERVICES LIMITED, England

71. IRAQI FREIGHT SERVICES LIMITED, England

72. IRAQI TRADE CENTER, Dubai, U.A.E.

73. JARACO S.A. (a.k.a. SOKTAR; f.k.a. TRADACO S.A.), 45 Route de Frontenex, CH-1207 Geneva, Switzerland

74. JASIM, Latif Nusayyif (a.k.a. JASSEM, Latif Nassif), Former Minister of Labor and Social Affairs, Baghdad, Iraq (DOB 1941) (individual)

75. JON, Hana Paul, 19 Tudor House, Windsor Way, Brook Green, London, England (individual)

76. JUME'AN, George, P.O. Box 1318, Amman, Jordan (individual)

77. KADHUM, Dr. Fadel Jawad, c/o Alvaney Court, 250 Finchley Road, London, England (individual)

78. KARAGHULLY, Labeed A., General Manager of REAL ESTATE BANK, Iraq (individual)

79. KEENCLOUD LIMITED, 11 Catherine Place, Westminister, London, England

80. KHALIL, Dr. Ahmad Murtada Ahmad (a.k.a. KHALIL, Ahmad Murtadha Ahmad), Former Minister of Transport and Communications, Iraq (individual)

81. MALIK, Assim Mohammed Rafiq Abdul (a.k.a. ABDULMALIK, Abdul Hameed; a.k.a. RAFIQ, Assem), 14 Almotaz Sad Al Deen Street, Al Nozha, Cairo, Egypt (individual)

82. MATRIX CHURCHILL CORPORATION, 5903 Harper Road, Cleveland, Ohio 44139, U.S.A.

83. MEED INTERNATIONAL LIMITED, 3 Mandeville Place, London, England

84. MIDCO FINANCE S.A. (a.k.a. MIDCO FINANCIAL S.A.; a.k.a. MONTANA MANAGEMENT INC.), 57 Rue du Rhone, CH-1204 Geneva, Switzerland

85. MIDCO FINANCE S.A. (a.k.a. MIDCO FINANCIAL S.A.; a.k.a. MONTANA MANAGEMENT INC.), c/o Morgan & Morgan, Edificio Torre Swiss Bank, Piso 16, Calle 53 Este, Marbella, Panama City, Republic of Panama

86. MOHAMED, Abdul Kader Ibrahim, Jianguomenwai Diplomatic Housing Compound, Building 7-1, 5th Floor, Apartment 4, Beijing, People's Republic of China (individual)

87. MUBARAK, Umid Medhat (a.k.a. MUBARAK, Umid Midhat), Former Minister of Health, Iraq (DOB ca. 1940) (individual)

88. NAMAN, Saalim (a.k.a. NAMAN, Sam), P.O. Box 39, Fletchamstead Highway, Coventry, England; Iraq; Amman, Jordan; 5903 Harper Road, Solon, OH, U.S.A.; 3343 Woodview Lake Road, West Bloomfield, MI 48323, U.S.A. (individual)

89. NESSI, Ferruccio, Piazza Grande 26, 6600 Locarno, Switzerland (individual)

90. OMRAN, Karim Dhaidas, Iraq (individual)

91. ORIENT SHIPPING LIMITED, Lot 18, Bay Street, Kingstowne, St. Vincent and the Grenadines

92. PANDORA SHIPPING CO. S.A., Honduras

93. PETRA NAVIGATION & INTERNATIONAL TRADING CO. LTD. (a.k.a. AL PETRA COMPANY FOR GOODS TRANSPORT LTD.), Hai Al Wahda Mahalat 906, 906 Zulak 50, House 14, Baghdad, Iraq

94. RAJBROOK LIMITED, England

95. REYNOLDS AND WILSON, LTD., 21 Victoria Road, Surbiton, Surrey KT6 4LK, England

96. RICKS, Roy, 87 St. Mary's Frice, Benfleet, Essex, England (individual)

97. RZOOKI, Hanna, Chairman of REAL ESTATE BANK, Iraq (individual)

98. S.M.I. SEWING MACHINES ITALY S.P.A., Italy

99. SALIH, Abd al-Munim Ahmad (a.k.a. SALEH, Abdel Moneim Ahmad), Former Minister of Awqaf and Religious Affairs, Iraq (DOB 1943) (individual)

100. SPECKMAN, Jeanine, England (individual)

101. T N K FABRICS LIMITED, England

102. T.E.G. LIMITED, 3 Mandeville Place, London, England

103. T.M.G. ENGINEERING LIMITED, Castle Row, Horticultural Place, Chiswick, London, England

104. TALL, Aktham, P.O. Box 1318, Amman, Jordan (individual)

105. TARIQ ABU SHANAB EST. FOR TRADE & COMMERCE (a.k.a. ABU SHANAB METALS ESTABLISHMENT; a.k.a. AMIN ABU SHANAB & SONS CO.; a.k.a. SHANAB METALS ESTABLISHMENT; a.k.a. TARIQ ABU SHANAB EST.; a.k.a. TARIQ ABU SHANAB METALS ESTABLISHMENT), Musherfeh, P.O. Box 766, Zarka, Jordan

106. TECHNOLOGY AND DEVELOPMENT GROUP LTD. (a.k.a. T.D.G.), Centric House 390/391, Strand, London, England

107. TIGRIS TRADING, INC., 2 Stratford Place, London W1N 9AE, England

108. TIGRIS TRADING, INC., 5903 Harper Road, Solon, Ohio 44139, U.S.A.

109. TRADING & MARITIME INVESTMENTS, San Lorenzo, Honduras

110. U.I. INTERNATIONAL, England

111. WHALE SHIPPING LTD., c/o Government of Iraq, State Organization of Ports, Maqal, Basrah, Iraq

112. ZAHRAN, Yousuf, P.O. Box 1318, Amman, Jordan (individual)

113. ZAINAL, Akram, Chairman and General Manager of AGRICULTURAL CO-OPERATIVE BANK, Iraq (individual)

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Part VII

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 732, 738, 740 et al.
Export and Reexport Controls for Iraq; Interim Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 738, 740, 742, 744, 746, 747, 750, 758, 762, 772 and 774

[Docket No. 040302078–4078–01]

RIN 0694—AC84

Export and Reexport Controls for Iraq

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to implement the reversion to the Department of Commerce from the Department of the Treasury of the licensing responsibility for exports and reexports to Iraq of items subject to the EAR. In addition, a license will be required for certain transfers within Iraq of items subject to the EAR. This rule is consistent with United Nations Security Council Resolutions 1483 (2003) and 1546 (2004), which lifted the comprehensive United Nations trade embargo imposed on Iraq but retained an embargo on arms and related materiel and their means of production.

DATES: This rule is effective July 30, 2004. Comments must be received on or before August 30, 2004.

ADDRESSES: Written comments should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or to e-mail: *squarter@bis.doc.gov.* The Bureau of Industry and Security Freedom of Information Records Inspection Facility is located at Room 6881, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; telephone: (202) 482–4252, or e-mail: *jroberts@bis.doc.gov.* Information about the inspection and copying of records at the facility may be obtained from the Bureau of Industry and Security Freedom of Information Officer at the above address or by calling (202) 482–0500.

SUPPLEMENTARY INFORMATION:

Background

This rule establishes the new export control policy for exports to Iraq under the licensing responsibility of the Bureau of Industry and Security (BIS). The new export control policy reflects changed circumstances in Iraq and is consistent with changes in U.S. legal authorities concerning Iraq and actions taken by the United Nations Security Council with respect to the embargo against Iraq.

The President has signed an Executive Order terminating the national emergency declared in Executive Order 12722, revoking it and certain related Executive Orders. Among other things, the termination of the national emergency in those Executive Orders ends the Department of the Treasury's authority to maintain export controls pursuant to those orders and related regulations, namely the Iraqi Sanctions Regulations, 31 CFR part 575. By virtue of this action, primary export licensing jurisdiction reverts to BIS.

In addition, Section 1503 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Pub. L. 108–11), authorized the President to make inapplicable, with respect to Iraq, Section 620A of the Foreign Assistance Act and any other provision of law applicable to countries that have supported terrorism. On May 7, 2003, the President exercised this authority by the issuance of Presidential Determination 2003–23, which, among other things, suspended the application of the provisions of the Iraq Sanctions Act of 1990 (Pub. L. 101–513), except section 586E (relating to penalties). In particular, the President's action suspended the requirement in section 586G(a)(3) of the Iraq Sanctions Act that items controlled under sections 5 and 6 of the Export Administration Act (50 U.S.C. App. 2401 *et seq.*) (EAA) be prohibited for export to Iraq and made inapplicable with respect to Iraq section 620A of the Foreign Assistance Act and any other provision of law that applies to countries that have supported terrorism.

Further, on May 22, 2003, the United Nations Security Council (UNSC) adopted Resolution 1483 that lifted the comprehensive UNSC trade sanctions on Iraq while retaining restrictions on the sale or supply to Iraq of arms and related materiel and their means of production. Resolution 1483 also reiterated certain provisions of related UNSC Resolutions 707 of August 15, 1991, and 687 of April 3, 1991. In particular, those provisions require that Iraq eliminate its nuclear weapons program and restrict its nuclear activities to the use of isotopes for medical, industrial or agricultural purposes. Such provisions further mandate the elimination of Iraq's chemical and biological weapons programs as well as its ballistic missile program. Sale or supply by U.S. entities that would make a material contribution to any of these programs is prohibited.

Finally, on June 8, 2004, the UNSC adopted Resolution 1546. In this resolution, the UNSC decided that prohibitions related to the sale or supply to Iraq of arms and related materiel under previous resolutions shall not apply to such items required by the Interim Government of Iraq or the Multinational Force in Iraq to serve the purposes of the resolution. Provisions in UNSC Resolutions 687 and 707 noted above are not affected by UNSC Resolution 1546.

License Requirements for Exports and Reexports to Iraq and Certain Transfers Within Iraq

Overview

The new Iraq export licensing policy significantly reduces the level of control over commercial exports to Iraq while retaining restrictions on the export of multilaterally-controlled items and other sensitive items to Iraq in keeping with Iraq's new economic and security status. The licensing requirements and licensing policy reflected in this rule are consistent with UNSC Resolution 1483 (2003) and other relevant resolutions which lifted the comprehensive trade embargo imposed on Iraq but retained certain restrictions including an embargo on arms and related materiel and their means of production.

This rule is designed to address two significant foreign policy goals with respect to Iraq. In particular, this rule furthers the goal of ensuring that exports and reexports of controlled items destined to civil infrastructure rebuilding do not suffer undue licensing delays. At the same time, in furtherance of applicable UNSC Resolutions and U.S. foreign policy interests, this rule revises section 746.3 of the Export Administration Regulations (15 CFR parts 730–799) (EAR) and retains substantial restrictions on exports to Iraq destined for inappropriate end-users or end-uses. In addition, this rule addresses certain transactions involving

the transfer of items subject to the EAR within Iraq.

Items for Which Export License Requirements Are Generally Lifted

Under this rule, items subject to the EAR but not listed on the Commerce Control List (15 CFR part 774) (CCL) (*i.e.*, EAR99 items) will generally not be subject to a license requirement except pursuant to the end-user and end-use controls set forth in part 744 of the EAR and revised section 746.3 of the EAR. Items controlled only for anti-terrorism (AT) reasons on the CCL, except for items controlled under six Export Control Classification Numbers (ECCNs), will also not be subject to a licensing requirement, except for the end-use and end-user requirements noted above. The six ECCNs controlled for AT reasons only for which licensing requirements are imposed by this rule are: 0B999 (Specific processing equipment such as hot cells and glove boxes suitable for use with radioactive materials), 0D999 (Specific software for neutronic calculations, radiation transport calculations and hydrodynamic calculations/modeling), 1B999 (Specific processing equipment such as electrolytic cells for fluorine production and particle accelerators), 1C992 (Commercial charges containing energetic materials, n.e.s.), 1C999 (Specific Materials, n.e.s.) and 6A992 (Optical Sensors, not controlled by 6A002). Please note that this rule retains AT controls for items controlled under ECCNs 1C995 (Certain mixtures and testing kits) and 1C997 (Ammonium Nitrate).

As a result, in most instances, the new policy will allow the export or reexport to Iraq, or the transfer within Iraq, without a license, of items classified as EAR99 or controlled only for AT reasons.

Also, the *de minimis* rules applicable to Iraq are amended to provide generally that reexports of items to Iraq from abroad are subject to the EAR only when U.S.-origin controlled content in such items exceeds 25% (as opposed to the existing 10%).

Items for Which Export License Requirements Will Be Retained

This rule retains license requirements for the export or reexport of items on the multilateral export control regime lists, the Wassenaar Arrangement, the Nuclear Suppliers' Group, the Australia Group and the Missile Technology Control Regime, and items controlled for crime control (CC) or regional stability (RS) reasons. These license requirements are set forth in part 742 of the EAR and are reflected in the relevant columns of the Country Chart in Supplement No. 1 to part 738 of the EAR. Certain categories of items that are controlled for reasons not included on the Country Chart (*e.g.*, encryption (EI), short supply (SS), and Chemical Weapons (CW)) also require a license for export or reexport to Iraq or transfer within Iraq.

New License Requirements

A license is required for the transfer within Iraq of any item subject to the EAR exported or reexported pursuant to a specific license issued by the Department of the Treasury or a Department of Commerce specific license or License Exception.

Section 746.3 of this rule imposes a license requirement for the export, reexport, or transfer of items subject to the EAR if, at the time of the export, reexport, or transfer, you know, have reason to know, or are informed by BIS that the item will be, or is intended to be, used in Iraq for a ''military end-use'' or by a ''military end-user'', as defined in that section. This license requirement does not apply to exports, reexports, or transfers of items for the official use by personnel or agencies of the U.S. Government or exports, reexports, or transfers to the Interim Government of Iraq or the Multinational Force in Iraq. This new license requirement is in addition to the existing license requirements established pursuant to the Enhanced Proliferation Control Initiative (EPCI), as set forth in part 744 of the EAR. The EPCI requirements will now also apply to the transfer within Iraq of any item subject to the EAR, if, at the time of the transfer, you know, have reason to know, or are informed by BIS that the item will be used in the design, development, production or use of weapons of mass destruction or the means of their delivery.

In addition, transfers within Iraq to designated terrorists or terrorist organizations, as set forth in sections 744.12, 744.13, or 744.14 of the EAR, and transfers to any persons referenced in new section 744.18 of the EAR, will require a license.

In addition to the license requirements described above, items on the CCL controlled for united nations (UN) reasons (including shotgun shells controlled under ECCN 0A986) will require a license for export or reexport to Iraq or transfer within Iraq, except exports, reexports or transfers to the Interim Government of Iraq or the Multinational Force in Iraq.

In this rule, BIS also will delete from the CCL the entry for ECCN 6A018, ''Magnetic, pressure, and acoustic underwater detection devices specially designed for military purposes and controls and components.'' References to ECCN 6A018 in entries for ECCNs 6E001 and 6E002 also will be removed. BIS has determined that no items subject to the EAR are controlled under this entry. Such items are subject to the export licensing authority of the U.S. Department of State Division of Defense Trade Controls.

Licensing Policy

Except as set forth in revised section 746.3, license applications for exports or reexports to Iraq and certain transfers within Iraq will be reviewed on a case-by-case basis pursuant to applicable licensing policies set forth in parts 742, 744 or elsewhere in the EAR.

Such review will be conducted consistent with UNSC Resolutions 1483 and 1546, and relevant resolutions, including UNSC Resolutions 687 and 707. UNSC Resolution 1483 reaffirms Iraq's disarmament obligations contained in prior UNSC resolutions relating to nuclear, chemical and biological weapons as well as ballistic missiles (defined for Iraq as those capable of a range greater than 150 kilometers). UNSC Resolutions 1483 and 1546 also retain restrictions on the sale or supply to Iraq of arms and related materiel and their means of production, and limit Iraq's civil or military nuclear activity, except for use of isotopes for medical, industrial or agricultural purposes. UNSC Resolution 1546 affirms these restrictions, while permitting exports, reexports, and transfers to the Interim Government of Iraq or the Multinational Force in Iraq.

Reason for Control: Chemical and Biological Weapons (CB)

CB-controlled exports and reexports to Iraq, and transfers within Iraq, will be reviewed on a case-by-case basis. Unless the export, reexport, or transfer is determined to contribute to the building of Iraqi civil infrastructure, there will be a general policy of denial for CB-controlled items.

Reason for Control: Nuclear Nonproliferation (NP)

NP-controlled exports and reexports to Iraq, and transfers within Iraq, will be reviewed on a case-by-case basis. Unless the export, reexport, or transfer is determined to contribute to the building of Iraqi civil non-nuclear infrastructure, there will be a general policy of denial for subsystems or components or any nuclear weapons research, development, support, or manufacturing facilities.

Reason for Control: National Security (NS)

NS-controlled machine tool equipment, software and technology exports and reexports to Iraq, and transfers within Iraq, will be reviewed on a case-by-case basis. Unless the export, reexport, or transfer is determined to contribute to the building of Iraqi civil infrastructure, there will be a general policy of denial for items for the production, research, design, development, support, maintenance or manufacture of Iraqi weapons of mass destruction or ballistic missiles (for Iraq, defined as those with a range of 150 km or greater) or arms and related materiel.

Reason for Control: Missile Technology (MT)

MT-controlled exports and reexports to Iraq, and transfers within Iraq, will be reviewed on a case-by-case basis. Unless the export, reexport, or transfer is determined to contribute to the building of Iraqi civil infrastructure, there will be a general policy of denial for major parts, repair and production facilities related to ballistic missiles with a range greater than 150 kilometers.

Licensing Policy Specific to Section 746.3 (Iraq)

As specified in section 746.3(b)(1), applications for the export or reexport to Iraq, or transfer within Iraq, of items controlled on the Commerce Control List for NS, MT, NP, CW, CB, RS, CC, EI, SI, XP or UN reasons will be subject to a policy of denial if destined for use in Iraqi civil nuclear or military nuclear activity. An exception exists for use of isotopes for medical, industrial or agricultural purposes, which will be reviewed on a case by case basis.

As specified in section 746.3(b)(2), applications for the export or reexport to Iraq, or transfer within Iraq, of machine tools controlled for NS and/or nuclear non-proliferation reasons, as well as any items controlled for CC or UN reasons (including under ECCN 0A986) or under ECCNs that end in the number ''018'', that would make a material contribution to the production, research, design, development, support, maintenance or manufacture of Iraqi weapons of mass destruction or ballistic missiles or arms and related materiel will also be subject to a general policy of denial.

As specified in section 746.3(b)(3), applications for the export or reexport to Iraq and transfer within Iraq, of items controlled for AT reasons under ECCNs 0B999, 0D999, 1B999, 1C992, 1C995, 1C997, 1C999 and 6A992 will be reviewed on a case-by-case basis to determine if they would contribute to the building of Iraqi civil infrastructure. Applications determined not to contribute to the building of Iraqi civil infrastructure will be subject to a general policy of denial.

Pursuant to section 746.3(b)(4), applications for the export or reexport to Iraq, or transfer within Iraq, of items that will be, or are intended to be, used for a ''military end-use'' or destined to a ''military end-user'' will be subject to a policy of denial.

License Exceptions

License Exceptions Available Generally to Group D Countries

The rule removes Iraq from Country Group E:1, found in Supplement 1 to part 740. Iraq has been added to Country Group D:1 and remains in Country Groups D:2, D:3 and D:4. Although Iraq currently remains on the list of designated terrorist-supporting countries, the anti-terrorism (AT) controls that apply to such countries under section 6(j) of the EAA will not apply to Iraq pursuant to Presidential Determination 2003–23. Countries in Country Group D:1 are of concern for national security reasons. Countries in Country Groups D:2, D:3 and D:4 are of concern for weapons proliferation reasons. As a result of Iraq's inclusion in Country Groups D:1 to D:4, the following License Exceptions may be available: CIV, CTP, TMP, RPL, GOV, GFT, TSU, BAG, AVS, ENC and KMI. A specific transaction is eligible for a License Exception only if it satisfies all of the terms and conditions of the relevant License Exception and is not excluded by any of the restrictions that apply to all License Exceptions, as set forth in the EAR (including, specifically, section 740.2).

Expanded License Exception Availability

The rule adds Iraq to Computer Tier 3 for exports or reexports of high performance computers under License Exception CTP (section 740.7 of the EAR). Countries in Tier 3 are eligible to receive computers up to and including 190,000 MTOPS (millions of theoretical operations per second) under License Exception CTP. Certain transfers within Iraq of computers up to and including 190,000 MTOPS will now require a license.

The export or reexport to Iraq of high performance computers exceeding 190,000 MTOPS continues to require a license. In addition, transfers within Iraq of computers exceeding 190,000 MTOPS will now also require a license.

Special License(s): Special Iraq Reconstruction License (SIRL)

This rule further establishes a new part 747 of the EAR entitled Special Iraq Reconstruction License (SIRL). Part 747 authorizes exports or reexports to Iraq, or transfers within Iraq, of items in furtherance of civil reconstruction and other projects funded by specified entities including the United States Government. Also included are projects funded by the United Nations, the World Bank, and the International Monetary Fund, and their affiliated entities (*i.e.*, International Bank for Reconstruction and Development, International Finance Corporation, and United Nations Development Programme) as well as any other entities the U.S. Government may designate. All items subject to the EAR except items controlled for missile technology (MT), nuclear nonproliferation (NP), or chemical and biological weapons (CB) reasons are eligible for export or reexport under a SIRL.

Applicants may apply for a SIRL by submitting a completed BIS Multipurpose Application form (BIS–748P), Item Appendix (BIS–748P–A), and End-User Appendix (BIS–748P–B), plus narrative statements, as described in section 747.4 of new part 747. BIS will process SIRL applications expeditiously. To approve a SIRL, BIS must be satisfied that the parties to the license will adhere to the conditions of the license and the EAR and that approval of the application will not be detrimental to U.S. national security, nonproliferation, or other foreign policy interests. A license is required to transfer within Iraq any item exported or reexported pursuant to a SIRL to an end-user not identified on the end-user appendix.

Savings Clause

Among other things, the termination of the national emergency declared in Executive Order 12722 ends the export prohibition in that and related Executive Orders and in OFAC's Iraqi Sanctions Regulations, 31 CFR part 575. However, to facilitate a smooth transition of licensing responsibility from OFAC to BIS, this rule extends the validity of licenses issued by OFAC for Iraq. For those specific licenses with specified expiration dates, such dates will continue to apply. Licenses without specified expiration dates will be valid through July 30, 2005.

Items licensed by OFAC and subsequently returned from Iraq to the United States do not require further authorization from BIS. However, persons returning items to the United

States that were previously exported or reexported to Iraq under a specific license granted by OFAC will be subject to a recordkeeping requirement set forth in revised section 746.3(e) of the EAR.

In addition, items exported or reexported to Iraq under a specific license granted by OFAC may not be transferred within Iraq to a new end-user without a license from BIS. Reexports of items previously exported or reexported to Iraq under a specific license granted by OFAC must conform with relevant provisions of the EAR based on the country to which the items are being reexported. In certain circumstances, such reexports may be eligible for a License Exception or may not require a license. Such reexports will also be subject to the recordkeeping requirement set forth in section 746.3(e) of the EAR.

Other Provisions

Consistent with Executive Order 13315 of August 28, 2003 (''Blocking Property of the Former Iraqi Regime, its Senior Officials and Their Family Members, and Taking Certain Other Actions''), this rule amends the EAR to create a new section 744.18 that creates a license requirement for exports, reexports, or transfers, of any item subject to the EAR to persons designated in or pursuant to Executive Order 13315. These persons include individuals and entities listed in the Annex to Executive Order 13315, as well as persons subsequently designated pursuant to criteria set forth in the order.

OFAC includes the names of persons designated pursuant to Executive Order 13315 in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. All persons designated in or pursuant to Executive Order 13315 are identified in Appendix A by the bracketed initials [IRAQ2].

To avoid duplication, U.S. persons are not required to seek separate BIS authorization for an export, reexport, or transfer, to a person identified in section 744.18 of any item subject to both the EAR and regulations maintained by OFAC. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

U.S. persons must seek authorization from BIS for the export, reexport, or transfer, to a person identified in section 744.18 of any item subject to the EAR but not subject to regulations maintained by OFAC (*e.g.*, deemed exports). Non-U.S. persons must seek authorization from BIS for the export from abroad, reexport, or transfer, to a person identified in section 744.18 of any item subject to the EAR. Applications for licenses for the export, reexport, or transfer, to a person identified in section 744.18 of any item subject to the EAR will be subject to a general policy of denial.

Although the EAA expired on August 30, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the Notice of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003), continues the EAR in effect under the International Emergency Economic Powers Act.

This action is taken after consultation with the Secretary of State. BIS submitted a foreign policy report to the Congress indicating the imposition of new foreign policy controls on July 28, 2004.

Rulemaking Requirements

1. This interim rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required 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 (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information approved by the Office of Management and Budget under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission and 0694–0129, ''Special Iraq Reconstruction License'' which carries a maximum annual burden of 3.5 hours per applicant. The Special Iraq Reconstruction License (SIRL) process authorizes special project-based licenses for exports and reexports in support of Iraq reconstruction. Public comment is sought regarding whether the collection of information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of technology. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (*See* 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under Title 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BIS will consider comments in the development of the final regulations. Accordingly, the Department of Commerce (the Department) encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close August 30, 2004. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of

theUnited States Government and general comments from foreign governments will not be available for public inspection.

The public record concerning this regulation will be maintained in the Bureau of Industry and Security Freedom of Information Records Inspection Facility (see **ADDRESSES** above). Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Industry and Security Freedom of Information Officer. (*See* **FOR FURTHER INFORMATION CONTACT** section above.)

List of Subjects

15 CFR Parts 732, 740, 747, 750, and 758

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 738, 742, 772, and 774

Exports, Foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and Industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 732, 738, 740, 742, 744, 746, 747, 750, 758, 762, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 732—[AMENDED]

■ 1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

§ 732.1 [Amended]

■ 2. Section 732.1 is amended:

■ a. By revising the phrase ''Cuba, Iran and Iraq.'' in the next to last sentence of paragraph (d)(2) to read ''Cuba and Iran.''; and

■ b. By revising the phrase ''countries subject to a comprehensive embargo (*e.g.*, Cuba, Iran and Iraq),'' in (d)(3) to read ''countries subject to a comprehensive embargo (*e.g.*, Cuba and Iran),''.

■ 3. Section 732.3 is amended by revising paragraph (d)(4) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(d) * * *

(4) *Destinations subject to embargo provisions.* The Country Chart does not apply to Cuba and Iran; and for those countries you should review the embargo provisions at part 746 of the EAR and may skip this step concerning the Country Chart. For Iraq and Rwanda, the Country Chart provides for certain license requirements, and part 746 of the EAR provides additional requirements.

PART 738—[AMENDED]

■ 4. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783;

■ 5. Supplement No. 1 to part 738 is amended by revising the entry for ''Iraq'' to read as follows:

Supplement No. 1 to Part 738—Commerce Country Chart

COMMERCE COUNTRY CHART
[Reason for control]

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Firearms Convention	Crime control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Iraq[1]	* X	X	* X	X	* X	X	X	* X	* X	X	*	X	* X			

[1] This country is subject to sanctions implemented by the United Nations Security Council. See part 746 for additional information and licensing requirements that apply to exports and reexports to the countries so marked. See also § 746.3 for license requirements for exports and reexports to Iraq or transfers within Iraq. Although most items controlled only for AT reasons do not require a license to Iraq, some items do require a license. See § 746.8 for license requirements for exports and reexports to Rwanda.

PART 740—[AMENDED]

■ 6. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 7. Section 740.2 is amended:

■ a. By revising the phrase ''to an embargoed destination (Cuba, Iran and Iraq)'' of paragraph (a)(6) to read ''to a comprehensively embargoed destination (Cuba and Iran)''; and

■ b. By amending paragraph (a)(8)(ii) by inserting ''or (v)'' before the semicolon; and

■ c. By adding new paragraph (d) to read as follows:

§ 740.2 Restrictions on all License Exceptions

* * * * *

(d) See § 746.3 for restrictions on certain transfers within Iraq of items exported or reexported to Iraq pursuant to a License Exception.

* * * * *

■ 8. Section 740.7 is amended:

■ a. By revising the phrase ''Cuba, Iran, Iraq, North Korea, Sudan, or Syria,'' in paragraph (b)(2) to read ''Cuba, Iran, North Korea, Sudan, or Syria,'' and

■ b. By revising paragraph (d)(1) to read as follows:

§ 740.7 Computers (CTP).

* * * * *

(d) *Computer Tier 3*—(1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Serbia and Montenegro, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen. As of May 2, 2002, Latvia is moved to Computer Tier 1.

* * * * *

■ 9. Section 740.9 is amended by revising paragraph (c)(2) to read as follows:

§ 740.9 Temporary, imports, exports, and reexports (TMP).

* * * * *

(c) * * *

(1) * * *

(2) Eligible countries. Encryption software controlled under ECCN 5D002 is not eligible for export or reexport to a country in Country Group E:1 under the provisions of this paragraph (c). All other beta test software is eligible for export or reexport to all destinations, except Cuba, Iran, and Sudan under the provisions of this paragraph (c).

* * * * *

§ 740.11 [Amended]

■ 10. Section 740.11 is amended by revising the phrase ''Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria,'' in paragraph (c)(2)(i) to read ''Cuba, Iran, Libya, North Korea, Sudan, or Syria,''.

§ 740.13 [Amended]

■ 11. Section 740.13 is amended:

■ a. By revising the phrase ''Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.'' in paragraph (e)(4) to read ''a country in Country Group E:1.''; and

■ b. By revising the phrase ''Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.'' in paragraph (e)(6) to read ''a country in Country Group E:1.''.

■ 12. Supplement No. 1 to part 740 is amended:

■ a. By revising the entry for Iraq in Country Group D; and

■ b. By revising Country Group E to read as follows:

Supplement No. 1 to PART 740—Country Groups

* * * * *

COUNTRY GROUP D

Country	[D:1] National Security	[D:2] Nuclear	[D:3] Chemical & Biological	[D:4] Missile Technology
*	*	*	*	*
Iraq	X	X	X	X
*	*	*	*	*

COUNTRY GROUP E [1]

Country	[E:1] Terrorist supporting countries [2]	[E:2] Unilateral embargo
Cuba	X	X
Iran	X	
Korea, North	X	
Libya	X	
Sudan	X	
Syria	X	

[1] In addition to the controls maintained by the Bureau of Industry and Security pursuant to the EAR, note that the Department of the Treasury administers:

(a) A comprehensive embargo against Cuba, Iran, and Sudan; and

(b) An embargo against certain persons, e.g., Specially Designated Terrorists (SDT), Foreign Terrorist Organizations (FTO), Specially Designated Global Terrorists (SDGT), and Specially Designated Narcotics Traffickers (SDNT). Please see part 744 of the EAR for controls maintained by the Bureau of Industry and Security on these and other persons.

[2] The President made inapplicable with respect to Iraq provisions of law that apply to countries that have supported terrorism.

PART 742—[AMENDED]

■ 13. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec 1503, Pub. L. 108–11,117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 14. Section 742.1 is amended:

■ a. By revising the heading ''Exports and reexports involving Cuba, Iran, and Iraq'' of paragraph (c) to read ''Exports and reexports involving Cuba and Iran'';

■ b. By revising the parenthetical phrase ''(Cuba, Iran, and Iraq).'' in paragraph (c) to read ''(Cuba and Iran).''; and

■ c. By revising paragraph (d) to read as follows:

§ 742.1 Introduction.

* * * * *

(d) *Anti-terrorism Controls on Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.* Commerce maintains anti-terrorism controls on Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan under section 6(a) of the Export Administration Act. Items controlled under section 6(a) to Iran, Syria, Sudan, North Korea and Libya are described in §§ 742.8, 742.9, 742.10, 742.19, and 742.20, respectively, and in Supplement No. 2 to part 742. Items controlled under section 6(a) to Iraq are described in § 746.3(a)(3). Commerce also maintains controls under section 6(j) of the EAA to Cuba, Libya, Iran, North Korea, Sudan and Syria. Items controlled to these countries under EAA section 6(j) are also described in Supplement 2 to part 742. The Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before issuing a license for an item controlled under section 6(j) to Cuba, Libya, North Korea, Iran, Sudan or Syria. As noted in paragraph (c) of this section, if you are exporting or reexporting to Cuba, Iran, or Iraq you should review part 746 of the EAR, Embargoes and Other Special Controls.

■ 15. Section 742.5 is amended by revising paragraph (a)(2) to read as follows:

§ 742.5 Missile technology.

(a) * * *

(1) * * *

(2) The term ''missiles'' is defined as rocket systems (including ballistic

missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least 500 kilograms (kg) payload to a range of a least 300 kilometers (km). See § 746.3 of the EAR for definition of a ''ballistic missile'' to be exported or reexported to Iraq.

§ 742.12 [Amended]

■ 16. Section 742.12 is amended:

■ a. By revising the phrase ''Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.'' in paragraph (a)(2) to read ''Cuba, Iran, Libya, North Korea, Sudan, and Syria.''; and

■ b. By removing the phrase ''for Iraq see § 746.3;'' from paragraph (b)(4)(ii).

■ 17. Supplement No. 2 to part 742 is amended by revising paragraph (b)(1) to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, Libya, North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(b) * * *

(1) On December 28, 1993, the Secretary of State determined that the export to Cuba, Libya, Iran, Iraq, North Korea, Sudan, or Syria of items described in paragraphs (c)(1) through (c)(5) of this Supplement, if destined to military, police, intelligence or other sensitive end-users, are controlled under EAA section 6(j). Therefore, the 30-day advance Congressional notification requirement applies to the export or reexport of these items to sensitive end-users in any of these countries.

Note to paragraph (b)(1): The items described in paragraphs (c)(1) through (c)(5) are not controlled under EAA section 6(j) to military, police, intelligence and other sensitive end-users in Iraq. The 30-day prior Congressional notification requirement also does not apply for the issuance of licenses for such transactions involving Iraq, consistent with Presidential Determination 2003–23, in which the President exercised his authority under the Emergency Wartime Supplemental Appropriations Act, 2003, to make inapplicable with respect to Iraq provisions of law that apply to countries that have supported terrorism. As described in § 746.3(a)(3), items to all end-users in Iraq classified under ECCNs 0B999, 0D999, 1B999, 1C992, 1C995, 1C997, 1C999 and 6A992 continue to be controlled under EAA section 6(a). Other licensing requirements continue to apply.

* * * * *

PART 744—[AMENDED]

■ 18. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p.208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 19. Part 744 is amended by adding a new section 744.18 to read as follows:

§ 744.18 Restrictions on exports, reexports, and transfers to persons designated in or pursuant to Executive Order 13315.

Consistent with Executive Order (E.O.) 13315 of August 28, 2003 (''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions''), BIS maintains restrictions on exports, reexports, and transfers to persons designated in or pursuant to E.O. 13315. These persons include individuals and entities listed in the Annex to Executive Order 13315, as well as persons subsequently designated pursuant to criteria set forth in the order. OFAC includes the names of persons designated pursuant to E.O. 13315 in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. All persons designated in or pursuant to E.O. 13315 are identified in Appendix A by the bracketed initials [IRAQ2].

(a) *License Requirements.*

(1) A license requirement applies to the export, reexport, or transfer of any item subject to the EAR to—

(i) Persons listed in the Annex to E.O. 13315 of August 28, 2003; or

(ii) Persons determined to be subject to E.O. 13315.

(2) To avoid duplication, U.S. persons are not required to seek separate BIS authorization for an export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to both the EAR and regulations maintained by OFAC. Therefore, if OFAC authorizes an export from the United States or an export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR but not subject to regulations maintained by OFAC.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR.

(5) Any export, reexport, or transfer to a person identified in paragraph (a) of this section by a U.S. person of any item subject both to the EAR and regulations maintained by OFAC and not authorized by OFAC is a violation of the EAR.

(6) Any export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR that is not subject to regulations maintained by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad, reexport, or transfer by a non-U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorizations are available for export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR.

(c) *Licensing policy.* Applications for licenses for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR will generally be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

PART 746—[AMENDED]

■ 20. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11,117 Stat. 559; 22 U.S.C. 6004; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 21. Section 746.1 is amended:

■ a. By revising the phrase ''Cuba, Iran and Iraq'' in paragraph (a) to read ''Cuba and Iran';

■ b. By revising paragraphs (a)(2) and (b) to read as follows:

§ 746.1 Introduction.

* * * * *

(a) * * *

(1) * * *

(2) *Iran.* BIS maintains license requirements and other restrictions on exports and reexports to Iran. A comprehensive embargo on transactions involving this country is administered by the Department of The Treasury's Office of Foreign Assets Control (OFAC).

(b) *Sanctions on selected categories of items to specific destinations.*

BIS controls the export and reexport of selected categories of items to Iraq and Rwanda consistent with United Nations Security Council Resolutions.

* * * * *

■ 22. Section 746.3 is revised to read as follows:

§ 746.3 Iraq.

Pursuant to United Nations Security Council (UNSC) Resolutions 1483 and 1546 and other relevant resolutions, the United Nations maintains an embargo on the sale or supply to Iraq of arms and related materiel and their means of production, except items required by the Interim Government of Iraq or the Multinational Force in Iraq to serve the purposes of Resolution 1546. UNSC Resolutions 707 and 687 require that Iraq eliminate its nuclear weapons program and restrict its nuclear activities to the use of isotopes for medical, industrial or agricultural purposes. Such resolutions further mandate that Iraq eliminate its chemical and biological weapons programs as well as its ballistic missile program. In support of the applicable UNSC resolutions, certain Iraq specific license requirements and licensing policies are detailed in this section. In addition, this section details restrictions on transfers of items subject to the EAR within Iraq. Exporters should be aware that other provisions of the EAR, including parts 742 and 744, will continue to apply with respect to exports and reexports to Iraq and transfers within Iraq.

(a) *License requirements.* (1) A license is required for the export or reexport to Iraq or transfer within Iraq of any item controlled on the Commerce Control List for NS, MT, NP, CW, CB, RS, CC, EI, SI, or XP reasons. *See* part 742 of the EAR.

(2) A license is required for the export or reexport to Iraq or transfer within Iraq of any item controlled on the Commerce Control List for UN reasons.

(3) A license is required for the export or reexport to Iraq or transfer within Iraq of items on the Commerce Control List controlled for AT reasons under the following ECCNs: 0B999, 0D999, 1B999,1C992, 1C995, 1C997, 1C999 and 6A992.

(4) A license is required for the export or reexport to Iraq or transfer within Iraq of any item subject to the EAR if, at the time of the export, reexport or transfer, you know, have reason to know, or are informed by BIS that the item will be, or is intended to be, used for a ''military end-use'' or by a ''military end-user'', as defined in this section. This license requirement does not apply to exports, reexports or transfers of items for the official use by personnel and agencies of the U.S. Government or exports, reexports or transfers to the Interim Government of Iraq or the Multinational Force in Iraq. *See* § 740.11(b)(3) of the EAR for the definition of ''agency of the U.S. Government.'' BIS may inform an exporter, reexporter, or other person, either individually by specific notice or through amendment to the EAR, that a license is required for export, reexport or transfer of items subject to the EAR to specified end-users, because BIS has determined that there is an unacceptable risk of diversion to the uses or users described in this paragraph. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter, reexporter or other person from compliance with the license requirements of this paragraph.

(i) *Military end-use.* In this section, the phrase ''military end-use'' means incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the Wassenaar Arrangement Munitions List (WAML) (as set out on the Wassenaar Arrangement website at *http://www.wassenaar.org*); or use, development, or deployment of military items described on the USML or the WAML.

(ii) *Military end-user.* In this section, the term ''military end-user'' means any ''person'' whose actions or functions are intended to support ''military end-uses'' as defined in paragraph (a)(4)(i) of this section and who is not recognized as a legitimate military organization by the U.S. Government.

(5) *Definitions.* For purposes of exports or reexports to Iraq or transfers within Iraq, ''ballistic missile'' is defined as any missile capable of a range greater than 150 kilometers.

(b) *Licensing policy.* (1) License applications for the export or reexport to Iraq or transfer within Iraq of items listed in paragraph (a)(1), (a)(2), or (a)(3) of this section for Iraqi civil nuclear or military nuclear activity, except for use of isotopes for medical, industrial or agricultural purposes, will be subject to a policy of denial.

(2) License applications for the export or reexport to Iraq or transfer within Iraq of machine tools controlled for national security (NS) or nuclear non-proliferation (NP) reasons, as well as for any items controlled for crime control (CC) or united nations (UN) reasons (including items controlled under ECCN 0A986) or ECCNs that end in the number ''018'', that would make a material contribution to the production, research, design, development, support, maintenance or manufacture of Iraqi weapons of mass destruction, ballistic missiles or arms and related materiel will be subject to a general policy of denial.

(3) License applications for the export or reexport to Iraq or transfer within Iraq of items listed in paragraph (a)(3) of this section will be reviewed on a case-by-case basis to determine if they would contribute to the building of Iraqi civil infrastructure. Applications determined not to contribute to the building of Iraqi civil infrastructure will be subject to a general policy of denial.

(4) License applications for the export or reexport to Iraq or transfer within Iraq of items listed in paragraph (a)(4) of this section will be subject to a policy of denial.

(c) *License exceptions.* You may export or reexport without a license if your transaction meets all the requirements of any of the following License Exceptions: CIV, CTP, TMP, RPL, GOV, GFT, TSU, BAG, AVS, ENC or KMI. For specific requirements of each of these License Exceptions, refer to part 740 of the EAR.

(d) *Related State Department controls.* The Department of State, Directorate of Defense Trade Controls, maintains controls on arms and military equipment to Iraq under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

(e) *Transition for licenses issued by the Department of the Treasury's Office of Foreign Assets Control.* Prior to July 30, 2004, the Department of the Treasury's Office of Foreign Assets Control (OFAC) exercised primary licensing jurisdiction for transactions with Iraq, as provided in 31 CFR part 575. This section establishes a validity period for licenses issued by OFAC for exports or reexports to Iraq.

(1) *Validity period.* Licenses issued by OFAC for the export or reexport of items that require a license to Iraq under the Export Administration Regulations (EAR) shall continue to be valid under the EAR. For those licenses with specified expiration dates, such dates will continue to apply. Licenses without specified expiration dates will be valid through July 30, 2005. The recordkeeping requirements applicable to exports and reexports of items pursuant to licenses issued by OFAC are described in paragraph (e)(3) of this section.

Note to paragraph (e)(1). Persons that have been authorized by OFAC to export or reexport items that are subject to the export control jurisdiction of other agencies must consult with OFAC and the other relevant agencies with regard to the expiration date of the authorization granted by OFAC.

(2) *Reexports or transfers.* Items subject to a license requirement under the EAR for export or reexport to Iraq as of July 30, 2004, that were previously exported or reexported to Iraq under a specific license granted by OFAC:

(i) May not be transferred within Iraq to a new end-user without a license from BIS,

(ii) May be reexported to the United States without a license,

(iii) May be reexported to third countries subject to the license requirements for the destination, end-use or end-user set forth elsewhere in the EAR.

(3) *Recordkeeping requirement.* Persons in receipt of a specific license granted by OFAC described in paragraph (e)(1) of this section must maintain a record of those items exported or reexported to Iraq pursuant to such specific license and record when the items are consumed or destroyed in the normal course of their use in Iraq, reexported to a third country not requiring further authorization from BIS, or returned to the United States. This requirement applies only to items subject to a license requirement under the EAR for export to Iraq as of July 30, 2004. These records must be maintained in accordance with recordkeeping requirements set forth in part 762 of the EAR and must include the following information:

(i) Date of export or reexport and related details (including means of transport);

(ii) Description of items (including ECCN) and value of items in U.S. Dollars;

(iii) Description of proposed end-use and locations in Iraq where items are intended to be used;

(iv) Parties other than specific OFAC licensee who may be given temporary access to the items; and

(v) Date of consumption or destruction, if the items are consumed or destroyed in the normal course of their use in Iraq, or the date of reexport to a third country not requiring further authorization from BIS, or return to the United States.

(f) *License Requirements for certain transfers within Iraq of items subject to the EAR.* (1) *Licensed items.* A license is required for the transfer within Iraq of any item subject to the EAR exported or reexported pursuant to a specific license issued by the Department of the Treasury or a Department of Commerce specific license or License Exception.

(2) *Other items.* (i) A license is required for the transfer within Iraq of any item subject to the EAR, if, at the time of the transfer, you know, have reason to know, or are informed by BIS that the item will be used in the design, development, production or use of weapons of mass destruction or the means of their delivery, as set forth in part 744 of the EAR.

(ii) A license is required for the transfer within Iraq to designated terrorists or terrorist organizations, as set forth in §§ 744.12, 744.13, or 744.14 of the EAR.

PART 747—[NEW]

■ 23. New part 747 is added to read as follows:

PART 747—SPECIAL IRAQ RECONSTRUCTION LICENSE

Sec.

747.1 Scope.
747.2 Eligibility requirements.
747.3 Eligible items.
747.4 Steps you must follow to apply for a SIRL.
747.5 SIRL application review process.

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 1503, Pub.L. 108–11,117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

§ 747.1 Scope.

A Special Iraq Reconstruction License (SIRL) authorizes exports and reexports to Iraq and transfers within Iraq of items in furtherance of civil reconstruction and other related projects.

§ 747.2 Eligibility requirements.

(a) A SIRL authorizes exports and reexports to Iraq and transfers within Iraq of items in furtherance of civil reconstruction and other projects funded by:

(1) The United States Government;

(2) The United Nations, the World Bank, and the International Monetary Fund, their affiliated entities (*i.e.*, International Bank for Reconstruction and Development, International Finance Corporation, and United Nations Development Programme); and

(3) Any other entities that the U.S. Government may designate.

(b) To be eligible for a SIRL, exports, reexports or transfers must be made pursuant to and within the scope of contractual or similar arrangements in furtherance of civil reconstruction or other projects in Iraq funded by any of the entities described above.

§ 747.3 Eligible items.

All items subject to the EAR, other than items controlled for missile technology (MT), nuclear nonproliferation (NP) or chemical and biological weapons (CB) reasons, are eligible for export, reexport or transfer under a SIRL.

§ 747.4 Steps you must follow to apply for a SIRL.

(a) *Step One: Prepare your documentation.*

(1) Form BIS–748P, Multipurpose Application, and Form BIS–748P–A, Item Appendix. You must complete the Multipurpose Application Form (BIS–748P) to apply for a SIRL. Applications must specifically describe, on Form BIS–748P–A, Item Appendix, all items subject to the EAR to be exported or reexported to Iraq, or transferred within Iraq, for which BIS approval is sought. Export control classification numbers (ECCNs) must be identified for all such items. Applicants should provide BIS commodity classifications, where available, as this will assist BIS to rule upon the application quickly.

(2) Form BIS–748P–B, End-User Appendix. All end-users must be identified on Form BIS–748P–B, End-User Appendix.

(b) *Step Two: Narrative statement to support application*—In support of an application for a SIRL, exporters must submit with the application a narrative statement that includes the following information:

(1) Identity of all parties to the proposed transaction;

(2) Detailed description of the project, funding entity, the contract or work order which formed the basis of the transaction, and any identification number or project code for that contract or work order;

(3) Explanation of how the project will contribute to the reconstruction of

Iraq and any potential security issues associated with the items to be exported, reexported or transferred;

(4) Written statement from one or more funding agencies referred to in § 747.2 addressing whether the transaction is likely to pose security issues;

(5) Certification that items will not be used in any of the prohibited proliferation activities described in part 744 of the EAR;

(6) For items that will remain in the control of the exporter, a commitment to return all items to the United States when the authorized project or activity is complete, excluding those items that are consumed in Iraq, absent specific permission from BIS; and

(7) Certification that parties to the transaction will obtain a license from BIS prior to transferring within Iraq or reexporting items to end-users not authorized under the SIRL, unless they would not require a BIS license to the new country of destination. (Please see the guidance in § 747.5(d) regarding the transfer of items to persons within Iraq not included on the End-User Appendix.)

§ 747.5 SIRL application review process.

(a) *Application processing time frames.* Upon receiving a complete application with all requisite supporting documentation, BIS may review the application for up to ten days before referring the application to the other appropriate agencies. Agencies have 30 days from the date of referral to process the application. The U.S. Government will review the application as expeditiously as possible.

(b) *Review policy.* (1) BIS will review SIRL applications on a case-by-case basis. To approve a SIRL, BIS must be satisfied that the parties to the license will adhere to the conditions of the license and the EAR, and that approval of the application will not be detrimental to U.S. national security, nonproliferation, or foreign policy interests. In reviewing and approving a specific SIRL application, BIS may retain the right to limit the items that are eligible or to prohibit the export, reexport, or transfer of items under the reconstruction license to specific firms or individuals.

(2) BIS will thoroughly analyze all parties, items and activities associated with the applicant's proposed transaction(s). If BIS cannot verify that all parties, items and activities are appropriate, or establish the reliability of the proposed parties to the application, it may deny the application, or modify it by eliminating certain consignees, items, activities or other elements.

(3) The licensing decision will focus on the following factors:

(i) The proposed end-use(s);

(ii) If the proposed transaction will contribute to the reconstruction of Iraq;

(iii) If the proposed transaction could contribute to the design, development, production, stockpiling, or use of nuclear or chemical or biological weapons, or missiles of greater than 150 kilometer range and the types of assurances available against these activities;

(iv) The potential impact of the proposed transaction on the security situation in Iraq; and

(v) The reliability of all parties to the proposed transaction.

(4) If the U.S. Government determines that the proposed transaction does not satisfy all the criteria of part 747, BIS will inform the applicant that the agency will review the application under standard license procedures for individual items rather than as a SIRL. The applicant may elect to have the application Returned Without Action. Applicants are not required to use the SIRL procedure and may seek authorization under standard license procedures.

(c) *Validity period.* SIRLs will be valid until the completion or discontinuation of the associated project detailed in the application or until otherwise determined by BIS. Applicants are required to submit a report to BIS verifying completion of the project or indicating that the project has been discontinued. These reports should be submitted to the following address: U.S. Department of Commerce, Office of Exporter Services, ATTN: Reports, 14th Pennsylvania Ave., NW., Washington, DC, 20230. The report should include the following information:

(1) The SIRL reference number;

(2) The date the project is completed or discontinued;

(3) Verification that items exported under the authority of the SIRL were, as applicable, consumed during use, returned to the United States, reexported to a third country, or transferred to a party within Iraq for whom the applicant has received a license from BIS; and

(4) The reference numbers of the licenses received for the reexport or transfer within Iraq, if required.

(d) *Post-shipment information.* For any items exported or reexported pursuant to a SIRL that are not consumed in Iraq, the applicant must either:

(1) Return the items to the United States,

(2) Reexport the items to a third country, and obtain prior BIS approval where required; or

(3) Seek a license from BIS prior to transferring the items within Iraq to an end-user not identified on the End-User Appendix.

(e) *Changes to a SIRL.* Changes to a SIRL require BIS prior approval if they involve:

(1) Change to consignee name or address;

(2) Addition of new consignee;

(3) Addition of new item;

(4) Changes to end user information or additional end users added; and/or

(5) Change to license holder ownership or control. Applicants must submit a written request for a change to the Office of Exporter Services. BIS will respond to these requests in written form. Changes involving the following must be reported to BIS within 30 days of their occurrence but do not require prior BIS approval:

(i) License holder address, contact information, or license value; or

(ii) Removing consignee(s), items or end users from the SIRL.

(f) *Administrative actions.* If BIS believes any party to a SIRL is not complying with all conditions of the SIRL, BIS may take measures including revoking or suspending parts of the SIRL, or may restrict what items may be shipped under the SIRL. Whenever necessary to protect the national interest of the United States, BIS may take any licensing action it deems appropriate, without regard to contracts or agreements entered into before such administrative action.

PART 750—[AMENDED]

■ 24. The authority citation for 15 CFR part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 1503, Pub. L. 108–11,117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 25. Section 750.4 is amended by revising paragraph (b)(6)(i) to read as follows:

§ 750.4 Procedures for processing license applications.

* * * * *

(b) * * *

(6) * * *

(i) *Designated countries.* The following countries have been designated by the Secretary of State as terrorist-supporting countries: Cuba,

Iran, Iraq, Libya, North Korea, Sudan, and Syria. However, the congressional notification requirement does not apply to Iraq in view of Presidential Determination 2003–23, in which the President exercised his authority under the Emergency Wartime Supplemental Appropriations Act, 2003, to make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act and any other provision of law that applies to countries that have supported terrorism.

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PART 758—[AMENDED]

■ 26. The authority citation for 15 CFR part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 27. Section 758.1 is amended by revising the phrase ''Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria,'' of paragraph (b)(1) to read ''A country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR''.

PART 762—[AMENDED]

■ 28. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 29. Section 762.2 is amended by redesignating paragraphs (b)(10) through (b)(43) as (b)(12) through (b)(45); and inserting new paragraphs (b)(10) and (b)(11) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(10) § 746.3 Iraq.

(11) Part 747, Special Iraq Reconstruction License.

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PART 772—[AMENDED]

■ 30. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 31. Section 772.1 is amended by revising the definition of ''Missiles'' to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

''Missiles''. (All)—Rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) ''capable of'' delivering at least 500 kilograms payload to a range of at least 300 kilometers. *See* § 746.3 for definition of a ''ballistic missile'' to be exported or reexported to Iraq or transferred within Iraq.

PART 774—[AMENDED]

■ 32. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 33. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A018 is amended by revising the License Requirements section to read as follows:

0A018 Items on the Wassenaar Munitions List

License Requirements

Reason for Control: NS, AT, UN.

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

* * * * *

■ 34. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A918 is amended by revising the License Requirements section to read as follows:

0A918 Miscellaneous Military Equipment not on the Wassenaar Munitions List

License Requirements

Reason for Control: RS, AT, UN.

Control(s)	Country chart
RS applies to entire entry.	RS Column 2.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 35. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A984 is amended by revising the License Requirements section to read as follows:

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, FC, UN.

Control(s)	Country chart
FC applies to entire entry.	FC Column 1.
CC applies to shotguns with a barrel.	CC Column 1.
length greater than or equal to 18 in.(45.72 cm), but less than 24 in.(60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user.	
CC applies to shotguns with a barrel length greater than or equal to 24 in.(60.96 cm), regardless of end-user.	CC Column 2.
CC applies to shotguns with a barrel length greater than or equal to 24 in.(60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry.	Iraq and Rwanda.

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■ 36. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A985 is amended by revising the License Requirements section to read as follows:

0A985 Discharge type arms (for example, stun guns, shock batons, electric cattle prods, immobilization guns and projectiles) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, UN.

Control(s): CC applies to entire entry. A license is required for ALL destinations, except Canada, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information.)

UN applies to entire entry.	Iraq and Rwanda

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■ 37. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A986 is amended by revising the License Requirements section to read as follows:

0A986 Shotgun shells, except buckshot shotgun shells, and parts

License Requirements

Reason for Control: AT, FC, UN.

Control(s)—Country Chart: AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

FC applies to entire entry.	FC Column 1.
UN applies to entire entry.	Iraq and Rwanda.

* * * * *

■ 38. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A987 is amended by revising the License Requirements section to read as follows:

0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and parts, n.e.s.

License Requirements

Reason for Control: FC, CC, UN.

Control(s)	Country chart
FC applies to optical sights for firearms, including shotguns described in ECCN 0A984, and related parts.	FC Column 1.
CC applies to entire entry.	CC Column 1.
UN applies to entire entry.	Iraq and Rwanda.

* * * * *

■ 39. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A988 is amended by revising the License Requirements section to read as follows:

0A988 Conventional military steel helmets as described by 0A018.d.1.; and machetes

License Requirements

Reason for Control: UN.

Control(s): UN applies to entire entry. A license is required for conventional military steel helmets as described by 0A018.d.1 to Iraq and Rwanda. A license is required for machetes to Iraq and Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

Note: Exports from the U.S. and transhipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See § 746.7 of the EAR for additional information on this requirement.)

* * * * *

■ 40. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0B986 is amended by revising the License Requirements section to read as follows:

0B986 Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells

License Requirements

Reason for Control: AT, UN.

Control(s): AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. *See* § 742.19 of the EAR for additional information.

UN applies to entire entry. A license is required for items controlled by this entry to Iraq and Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. *See* part 746 of the EAR for additional information.

* * * * *

■ 41. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0B999 is amended by revising the License Requirements section to read as follows:

0B999 Specific processing equipment, as follows (see List of Items Controlled)

License Requirements

Reason for Control: AT.

Control(s)—Country Chart: AT applies to entire entry. A license is required for items controlled by this entry to Iraq and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 and § 746.3 of the EAR for additional information.

* * * * *

■ 42. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0D999 is amended by revising the License Requirements section to read as follows:

0D999 Specific software, as follows (see List of Items Controlled)

License Requirements

Reason for Control: AT.

Control(s)—Country Chart: AT applies to entire entry. A license is required for items controlled by this entry to Iraq and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 and § 746.3 of the EAR for additional information.

* * * * *

■ 43. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0E018 is amended by revising the License Requirements section to read as follows:

0E018 "Technology" for the "development", "production", or "use" of items controlled by 0A018.a through 0A018.c

License Requirements

Reason for Control: NS, UN, AT.

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
UN applies to entire entry.	Iraq and Rwanda.
AT applies to entire entry.	AT Column 1.

* * * * *

■ 44. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0E918 is amended by revising the License Requirements section to read as follows:

0E918 "Technology" for the "development", "production", or "use" of bayonets

License Requirements

Reason for Control: RS, UN, AT.

Control(s)	Country chart
RS applies to entire entry.	RS Column 2.
UN applies to entire entry.	Iraq and Rwanda.
AT applies to entire entry.	AT Column 1.

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■ 45. In Supplement No. 1 part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0E984 is amended by revising the License Requirements section to read as follows:

0E984 Technology" for the "development" or "production" of shotguns controlled by 0A984 and buckshot shotgun shells

License Requirements

Reason for Control: CC, UN.

Control(s)	Country chart
CC applies to "technology" for shotguns with a barrel length over 18 in. (45.72 cm) but less than 24 in. (60.96 cm) and shotgun shells, regardless of end-user.	CC Column 1.
CC applies to "technology" for shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to "technology" for shotguns with a barrel length over 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry.	Iraq and Rwanda.

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■ 46. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and Toxins, Export Control Classification Number (ECCN) 1A005 is amended by revising the License Requirements section to read as follows:

1A005 Body armor, and specially designed components therefor, not manufactured to military standards or specifications, nor to their equivalents in performance

License Requirements

Reason for Control: NS, UN, AT

Control(s)	Country chart
NS applies to entire entry.	NS Column 2.
UN applies to entire entry.	Iraq and Rwanda.
AT applies to entire entry.	AT Column 1.

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■ 47. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and Toxins, Export Control Classification Number (ECCN) 1B018 is amended by revising the License Requirements section to read as follows:

1B018 Equipment on the International Munitions List

License Requirements

Reason for Control: NS, MT, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
MT applies to equipment for the "production" of rocket propellants.	MT Column 1.
RS applies to 1B018.a.	RS Column 2.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

■ 48. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and Toxins, Export Control Classification Number (ECCN) 1B999 is amended by revising the License Requirements section to read as follows:

1B999 Specific processing equipment, n.e.s., as follows (see List of Items Controlled)

License Requirements

Reason for Control: AT.

Control(s)—Country Chart AT applies to entire entry. A license is required for items controlled by this entry to Iraq and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 and § 746.3 of the EAR for additional information.

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■ 49. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and Toxins, Export Control Classification Number (ECCN) 1C018 is amended by revising the License Requirements section to read as follows:

1C018 Commercial charges and devices containing energetic materials on the International Munitions List and certain chemicals as follows (see List of Items Controlled)

License Requirements

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry except as noted in 1C018.m.	NS Column 1.
MT applies to 1C018.m except as noted therein.	MT Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 50. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' and Toxins, Export Control Classification Number (ECCN) 1C350 is amended by revising the License Requirements section to read as follows:

1C350 Chemicals that may be used as precursors for toxic chemical agents

License Requirements:

Reason for Control: CB, CW, AT.

Control(s)	Country chart
CB applies to entire entry.	CB Column 2.

CW applies to 1C350.b and .c. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required, for CW reasons, to export or reexport Schedule 2 chemicals and mixtures identified in 1C350.b to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR). A license is required, for CW reasons, to export Schedule 3 chemicals and mixtures identified in 1C350.c to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country has been obtained by the exporter prior to export. A license is required, for CW reasons, to reexport Schedule 3 chemicals and mixtures identified in 1C350.c from a State not Party to the CWC to any other State not Party to the CWC. (See § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons. See § 745.2 of the EAR for End-Use Certificate requirements that apply to exports of Schedule 3 chemicals to countries not listed in Supplement No. 2 to part 745 of the EAR.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C350. A license is required, for AT reasons, to export or reexport items controlled by 1C350 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, Libya, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for export controls on Syria.)

License Requirement Notes:

1. *SAMPLE SHIPMENTS:* Subject to the following requirements and restrictions, a license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of a single chemical to any one consignee during a calendar year. A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons.

a. *Chemicals Not Eligible:*

A. *[RESERVED]*

B. *CWC Schedule 2 chemicals (States not Party to the CWC).* No CWC Schedule 2 chemical or mixture identified in 1C350.b is eligible for sample shipment to *States not Party to the CWC* (*i.e.*, destinations *not* listed in Supplement No. 2 to part 745 of the EAR) without a license.

b. *Countries Not Eligible:* Countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR are *not* eligible to receive sample shipments of any chemicals controlled by this ECCN without a license.

c. *Sample shipments that require an End-Use Certificate for CW reasons:* No CWC Schedule 3 chemical or mixture identified in 1C350.c is eligible for sample shipment to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) without a license, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export (*see* § 745.2 of the EAR for End-Use Certificate requirements).

d. *Sample shipments that require a license for reasons set forth elsewhere in the EAR:* Sample shipments, as described in this Note 1, may require a license for reasons set forth elsewhere in the EAR. *See*, in particular, the end-use/end-user restrictions in part 744 of the EAR, and the restrictions that apply to embargoed countries in part 746 of the EAR.

e. *Quarterly report requirement.* The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled ''Report of Sample Shipments of Chemical Precursors'' at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Industry and Security, P.O. Box 273, Washington, DC 20044, Attn: ''Report of Sample Shipments of Chemical Precursors''.

2. *MIXTURES:*

a. Mixtures that contain precursor chemicals identified in ECCN 1C350, in concentrations that are below the levels indicated in 1C350.a through .d, are controlled by ECCN 1C395 or 1C995 and are subject to the licensing requirements specified in those ECCNs.

b. A license is not required for mixtures controlled under this ECCN when the controlled chemical in the mixture is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

Note to Mixtures: Calculation of concentrations of AG-controlled chemicals:

a. Exclusion. No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. Percent Weight Calculation. When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents.

3. *COMPOUNDS.* Compounds created with any chemicals identified in this ECCN 1C350 may be shipped NLR (No License Required), without obtaining an End-Use Certificate, unless those compounds are also identified in this entry or require a license for reasons set forth elsewhere in the EAR.

4. *TESTING KITS:* Certain medical, analytical, diagnostic, and food testing kits containing small quantities of chemicals identified in this ECCN 1C350 are excluded from the scope of this ECCN and are controlled under ECCN 1C395 or 1C995. (Note that replacement reagents for such kits are controlled by this ECCN 1C350 if the reagents contain one or more of the precursor chemicals identified in 1C350 in concentrations equal to or greater than the control levels for mixtures indicated in 1C350.)

Technical Notes: 1. For purposes of this entry, a ''mixture'' is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

2. The scope of this control applicable to Hydrogen Fluoride (see 1C350.d.7 in the List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

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■ 51. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' and Toxins, Export

Control Classification Number (ECCN) 1C355 is amended by revising the License Requirements section to read as follows:

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals and families of chemicals not controlled by ECCN 1C350 or by the Department of State under the ITAR

License Requirements

Reason for Control: CW, AT.

Control(s) CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required to export or reexport CWC Schedule 2 chemicals and mixtures identified in 1C355.a to States not Party to the CWC (*i.e.*, destinations *not* listed in Supplement No. 2 to part 745 of the EAR). A license is required to export CWC Schedule 3 chemicals and mixtures identified in 1C355.b to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter, prior to export. A license is required to reexport CWC Schedule 3 chemicals and mixtures identified in 1C355.b from a State not Party to the CWC to any other State not Party to the CWC. (*See* § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C355. A license is required, for AT reasons, to export or reexport items controlled by 1C355 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (*See* part 742 of the EAR for additional information on the AT controls that apply to Iran, Libya, North Korea, Sudan, and Syria. *See* part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for export controls on Syria.)

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■ 52. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' and Toxins, Export Control Classification Number (ECCN) 1C395 is amended by revising the License Requirements section to read as follows:

1C395 Mixtures and medical, analytical, diagnostic, and food testing kits not controlled by ECCN 1C350, as follows (See List of Items Controlled)

License Requirements

Reason for Control: CB, CW, AT

Control(s): CB applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CB reasons in 1C395. A license is required, for CB reasons, to export or reexport mixtures controlled by 1C395.a and test kits controlled by 1C395.b to States not Party to the CWC (*i.e.*, destinations *not* listed in Supplement No. 2 to part 745 of the EAR).

CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required for CW reasons, as follows, to States not Party to the CWC (*i.e.*, destinations *not* listed in Supplement No. 2 to part 745 of the EAR): (1) exports and reexports of mixtures controlled by 1C395.a, (2) exports and reexports of test kits controlled by 1C395.b that contain CWC Schedule 2 chemicals controlled by ECCN 1C350, (3) exports of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals controlled by ECCN 1C350, except that a license is not required, for CW reasons, to export test kits containing CWC Schedule 3 chemicals if an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export, and (4) reexports from States not Party to the CWC of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals. (*See* § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C395. A license is required, for AT reasons, to export or reexport items controlled by 1C395 a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (*See* part 742 of the EAR for additional information on the AT controls that apply to Iran, Libya, North Korea, Sudan, and Syria. *See* part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. *See* Supplement No. 1 to part 736 of the EAR for export controls on Syria.)

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■ 53. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' and Toxins, Export Control Classification Number (ECCN) 1C992 is amended by revising the License Requirements section to read as follows:

1C992 Commercial charges and devices containing energetic materials, n.e.s. and nitrogen trifluoride in a gaseous state

License Requirements

Reason for Control: AT

AT applies to entire entry	AT Column 1 and Iraq

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■ 54. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' and Toxins, Export Control Classification Number (ECCN) 1C995 is amended by revising the License Requirements section to read as follows:

1C995 Mixtures not controlled by ECCN 1C350, ECCN 1C355 or ECCN 1C395 that contain chemicals controlled by ECCN 1C350 or ECCN 1C355 and medical, analytical, diagnostic, and food testing kits not controlled by ECCN 1C350 or ECCN 1C395 that contain chemicals controlled by ECCN 1C350.d, as follows (see List of Items Controlled)

License Requirements

Reason for Control: AT Column 1 and Iraq.

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■ 55. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' and Toxins, Export Control Classification Number (ECCN) 1C999 is amended by revising the License Requirements section to read as follows:

1C999 Specific materials, n.e.s., as follows (see List of Items Controlled)

License Requirements

Reason for Control: AT

Control(s)—Country Chart: AT applies to entire entry. A license is required for items controlled by this entry to Iraq and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 and § 746.3 of the EAR for additional information.

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■ 56. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals,

''Microorganisms,'' and Toxins, Export Control Classification Number (ECCN) 1D018 is amended by revising the License Requirements section to read as follows:

1D018 ''Software'' specially designed or modified for the ''development'', ''production'', or ''use'' of items controlled by 1B018

License Requirements

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
MT applies to ''software'' for the ''development'', ''production'', or ''use'' of items controlled by 1B018 for MT reasons.	MT Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 57. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B018 is amended by revising the License Requirements section to read as follows:

2B018 Equipment on the International Munitions List

License Requirements

Reason for Control: NS, MT, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
MT applies to specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) usable in systems that are controlled for MT reasons including their propulsion systems and components, and pyrolytic deposition and densification equipment.	MT Column 1.
RS applies to entire entry.	RS Column 2.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 58. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2D018 is amended by revising the License Requirements section to read as follows:

2D018 ''Software'' for the ''development'', ''production'' or ''use'' of equipment controlled by 2B018

License Requirements

Reason for Control: NS, MT, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
MT applies to ''software'' for equipment controlled by 2B018 for MT reasons.	MT Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 59. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2E018 is amended by revising the License Requirements section to read as follows:

2E018 ''Technology'' for the ''use'' of equipment controlled by 2B018

License Requirements

Reason for Control: NS, MT, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
MT applies to ''technology'' for equipment controlled by 2B018 for MT reasons.	MT Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 60. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, the following Export Control Classification Number (ECCN) 4A003 is amended by revising the License Requirements section, to read as follows:

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, as follows, and specially designed components therefor

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country chart
NS applies to 4A003.b and .c.	NS Column 1.
NS applies to 4A003.a, .e, and .g.	NS Column 2.
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006.	MT Column 1.
CC applies to ''digital computers'' for computerized finger-print equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on ''digital computers'' with a CTP ≥6 but ≤ to 190,000 MTOPS).	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''digital computers'' with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

Note: For all destinations, except those countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with a CTP not greater than 190,000 MTOPS and for ''electronic assemblies'' described in 4A003.c that are not capable of exceeding a CTP greater than 190,000 MTOPS in aggregation, except certain transfers as set forth in § 746.3 (Iraq). Computers controlled in this entry for MT reasons are not eligible for NLR.

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■ 61. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A002 is amended by revising the License Requirements section to read as follows:

6A002 Optical sensors

License Requirements

Reason for Control: NS, MT, CC, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 2.
MT applies to optical detectors in 6A002.a.1, a.3, or .e that are specially designed or modified to protect "missiles" against nuclear effects (*e.g.*, Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for "missiles".	MT Column 1.
RS applies to 6A002.a.1, a.2, a.3, .c, and .e.	RS Column 1.
CC applies to police-model infrared viewers in 6A002.c.	CC Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to 6A002.a.1, a.2 a.3 and c.	Iraq and Rwanda.

License Requirement Notes: *See* § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

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■ 62. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A003 is amended by revising the License Requirements section to read as follows:

6A003 Cameras

License Requirements

Reason for Control: NS, NP, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 2.
NP applies to items controlled in paragraphs 6A003.a.2, a.3 and a.4.	NP Column 1.
RS applies to items controlled in 6A003.b.3 and b.4.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to items controlled in 6A003.b.3 and b.4.	Iraq and Rwanda.

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■ 63. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, is amended by removing Export Control Classification Number (ECCN) 6A018.

■ 64. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A992 is amended by revising the License Requirements section to read as follows:

6A992 Optical Sensors, not controlled by 6A002

License Requirements

Reason for Control: AT

Control(s)	Country Chart
AT applies to entire entry.	AT Column 1 and Iraq.

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■ 65. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6E001 is amended by revising the heading and the License Requirements section to read as follows:

6E001 "Technology" according to the General Technology Note for the "development" of equipment, materials or "software" controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993

License Requirements

Reason for Control: NS, MT, NP, RS, CC, AT, UN

Control(s)	Country chart
NS applies to "technology" for items controlled by 6A001 to 6A008, 6B004 to 6B008, 6C002 to 6C005, or 6D001 to 6D003.	NS Column 1.
MT applies to "technology" for items controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, 6B108, 6D001, 6D002, 6D102 or 6D103 for MT reasons.	MT Column 1.
NP applies to "technology" for items controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225, 6A226, or 6D001 for NP reasons.	NP Column 1.
RS applies to "technology" for equipment controlled by 6A002.a.1, .a.2, .a.3, .c, or .e, 6A003.b.3 or .b.4, or 6A008.j.1.	RS Column 1.
CC applies to "technology" for equipment controlled by 6A002 for CC reasons.	CC Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to "technology" for equipment controlled by 6A002 or 6A003 for UN reasons.	Iraq and Rwanda.

License Requirement Notes: *See* § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

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■ 66. Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6E002 is amended by revising the heading and the License Requirements section to read as follows:

6E002 "Technology" according to the General Technology Note for the "production" of equipment or materials controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994)

License Requirements

Reason for Control: NS, MT, NP, RS, CC, AT, UN

Control(s)	Country chart
NS applies to "technology" for equipment controlled by 6A001 to 6A008, 6B004 to 6B008, or 6C002 to 6C005.	NS Column 1.
MT applies to "technology" for equipment controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, or 6B108 for MT reasons.	MT Column 1.
NP applies to "technology" for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons.	NP Column 1.
RS applies to "technology"for equipment controlled by 6A002.a.1, .a.2, .a.3, .c, or .e, 6A003.b.3 or .b.4, or 6A008.j.1.	RS Column 1.
CC applies to "technology" for equipment controlled by 6A002 for CC reasons.	CC Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to "technology" for equipment controlled by 6A002 or 6A003 for UN reasons.	Iraq and Rwanda.

License Requirement Notes: *See* § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

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■ 67. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8A018 is amended by revising the License Requirements section to read as follows:

8A018 Items on the International Munitions List

License Requirements

Reason for Control: NS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 68. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8A918 is amended by revising the License Requirements section to read as follows:

8A918 Marine Boilers

License Requirements

Reason for Control: RS, AT, UN

Control(s)	Country chart
RS applies to entire entry.	RS Column 2.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 69. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A018 is amended by revising the License Requirements section to read as follows:

9A018 Equipment on the International Munitions List

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
RS applies to 9A018.a and b.	RS Column 2.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 70. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A991 is amended by revising the License Requirements section to read as follows:

9A991 ''Aircraft'', n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.

License Requirements

Reason for Control: AT, UN

Control(s)	Country chart
AT applies to entire entry.	AT Column 1.
UN applies to 9A991.a ..	Iraq and Rwanda.

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■ 71. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9D018 is amended by revising the License Requirements section to read as follows:

9D018 ''Software'' for the ''use'' of equipment controlled by 9A018

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
RS applies to 9A018.a and .b.	RS Column 2.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Iraq and Rwanda.

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■ 72. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9E018 is amended by revising the License Requirements section to read as follows:

9E018 ''Technology'' for the ''development'', ''production'', or ''use'' of equipment controlled by 9A018

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1
RS applies to 9A018.a and .b.	RS Column 2
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	Iraq and Rwanda

* * * * *

■ 73. Supplement No. 2 to Part 774 (General Technology and Software Notes) is revised to read as follows:

Supplement No. 2 to Part 774 (General Technology and Software Notes)

1. *General Technology Note.* The export of ''technology'' that is ''required'' for the ''development'', ''production'', or ''use'' of items on the Commerce Control List is controlled according to the provisions in each Category.

''Technology'' ''required'' for the ''development'', ''production'', or ''use'' of a controlled product remains controlled even when applicable to a product controlled at a lower level.

License Exception TSU is available for ''technology'' that is the minimum necessary for the installation, operation, maintenance (checking), and repair of those products that are eligible for License Exceptions or that are exported under a license.

N.B.: This does not allow release under a License Exception of the repair ''technology'' controlled by 1E002.e, 1E002.f, 8E002.a, or 8E002.b.

N.B.: The ''minimum necessary'' excludes ''development'' or ''production'' technology and permits ''use'' technology only to the extent ''required'' to ensure safe and efficient use of the product. Individual ECCNs may further restrict export of ''minimum necessary'' information.

2. *General Software Note.* License Exception TSU (''mass market'' software) is available to all destinations, except countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, for release of software that is generally available to the public by being:

a. Sold from stock at retail selling points, without restriction, by means of:

1. Over the counter transactions;
2. Mail order transactions;
3. Electronic transactions; *or*
4. Telephone call transactions; *and*

b. Designed for installation by the user without further substantial support by the supplier.

Note: The General Software Note does not apply to ''software'' controlled by Category 5—part 2 (''Information Security''). For

''software'' controlled by Category 5, part 2, see Supplement No. 1 to part 774, Category 5, part 2, Note 3—Cryptography Note.

Dated: July 28, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–17532 Filed 7–29–04; 2:13 pm]

BILLING CODE 3510–33–P

Federal Register

Friday,
July 30, 2004

Part VIII

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 575

Implementation of Executive Order 13315 with Respect to Iraq; General License No. 1; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Implementation of Executive Order 13315 with Respect to Iraq; General License No. 1

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; publication of general license.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is amending the Iraqi Sanctions Regulations, in light of the President's termination of the national emergency declared in Executive Order 12722. OFAC is also issuing General License No. 1 under Executive Order 13315 to allow certain transactions related to Iraq under that Executive Order.

DATES: This rule is effective July 30, 2004, except that 31 CFR 575.533(a), (b)(1), (b)(3), (b)(4) and (b)(5) are effective May 23, 2003.

FOR FURTHER INFORMATION CONTACT: OFAC's Chief of Licensing, tel. 202/622–2480, Chief of Policy Planning and Program Management, tel. 202/622–4855, or Chief Counsel, tel. 202/622–2410.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1990, upon Iraq's invasion of Kuwait, the President issued Executive Order 12722, declaring a national emergency with respect to Iraq. This order, issued under the authority of, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the U.S. Code, imposed economic sanctions against Iraq, including a complete trade embargo and a freeze of Government of Iraq property and interests in property. In keeping with United Nations Security Council Resolution 661 of August 6, 1990, and under the United Nations Participation Act (22 U.S.C. 287c), the President also issued Executive Order 12724 of August 9, 1990, which imposed additional restrictions. The Iraqi Sanctions Regulations, 31 CFR part 575 (the ''Regulations''), implement Executive Orders 12722 and 12724 and are administered by the Treasury Department's Office of Foreign Assets Control (''OFAC'').

On May 22, 2003, the United Nations Security Council adopted Resolution 1483, which substantially lifted the multilateral economic sanctions with respect to Iraq. On May 23, 2003, the Treasury Department issued a general license consistent with Resolution 1483. That general license was published as new section 575.533 of the Regulations.

On August 28, 2003, President Bush signed Executive Order 13315, ''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions,'' invoking the authority of, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the United Nations Participation Act (22 U.S.C. 287c), and section 301 of title 3 of the U.S. Code. This Executive Order expands a national emergency first declared in Executive Order 13303 of May 22, 2003, regarding the reconstruction of Iraq. Both Executive Orders were issued in view of obligations established in United Nations Security Council Resolution 1483.

The national emergency declared in Executive Order 13303 and expanded in Executive Order 13315 is distinct from the national emergency declared in Executive Order 12722, upon which the Iraqi Sanctions Regulations are based. Although based on distinct national emergencies, however, the sanctions imposed in Executive Order 13315 overlap in some respects with the sanctions imposed by the Iraqi Sanctions Regulations. Consequently, on March 16, 2004, to synchronize the legal effects of both the Regulations and Executive Order 13315, the Treasury Department revised section 575.533 of the Regulations and issued General License No. 1 under Executive Order 13315.

The President has issued an Executive order terminating the national emergency declared in Executive Order 12722. Notwithstanding the termination of the national emergency, this new Executive order, pursuant to the President's authority under section 207 of IEEPA (50 U.S.C. 1706), continues prohibitions with regard to transactions involving any property blocked pursuant to Executive Order 12722 or Executive Order 12724 that remains blocked as of July 30, 2004. Moreover, the new Executive order indicates that the termination ''shall not affect any action taken or proceeding pending but not concluded'' as of July 30, 2004, nor will it affect ''any rights or duties that had matured'' prior to that date. However, among other things, the President's termination of the national emergency in Executive Order 12722 will end as of July 30, 2004, the import and export prohibitions imposed pursuant to that order, Executive Order 12724, and related regulations, including the Iraqi Sanctions Regulations, 31 CFR part 575.

1. Revision of 31 CFR 575.533

In light of the President's action terminating the national emergency declared in Executive Order 12722, the Treasury Department is further revising section 575.533 to clarify the impact of the President's action, and to clarify the impact of a revised rule regarding Iraq issued today by the Commerce Department, on certain specific licenses issued by OFAC pursuant to Executive Order 12722 and the Iraqi Sanctions Regulations, 31 CFR part 575. In addition, today's amendment to section 575.533 will recognize the transfer to the Commerce Department of licensing jurisdiction over exports from the United States to Iraq. Effective July 30, 2004, all applications for exportation or reexportation to Iraq of any items controlled by the Department of Commerce under the Export Administration Regulations (15 CFR parts 730 through 799) for exportation to Iraq are to be submitted to the Department of Commerce, Bureau of Industry and Security.

Paragraph (a) of section 575.533 indicates that between May 23, 2003 and July 30, 2004, all transactions were authorized that were otherwise prohibited by subpart B of the Regulations, with three exceptions addressed in paragraph (b). Paragraph (b)(1) of section 575.533 provides that all property and interests in property, including accounts, that were blocked as of May 23, 2003, pursuant to Executive Order 12722 or Executive Order 12724, or subpart B of the Regulations, remain blocked and subject to the prohibitions and requirements of the Regulations.

As mentioned above, the President's termination of the national emergency in Executive Order 12722, as of July 30, 2004, ends the Treasury Department's jurisdiction over exports and reexports to Iraq and that jurisdiction transfers to the Department of Commerce. Consequently, paragraph (b)(2) of section 575.533 is revised to remove reference to OFAC's issuance of specific licenses for the exportation of certain goods to Iraq. That paragraph is further revised to indicate that as of July 30, 2004, OFAC will not accept license applications for exports or reexports to Iraq. On or after July 30, 2004, all inquiries or applications regarding exports or reexports to Iraq should be made to the Bureau of Industry and Security, Department of Commerce. All

OFAC licenses for the exportation or reexportation of goods, software or technology to Iraq issued pursuant to part 575 shall remain valid until the expiration date stated in the license, or if no expiration date is provided in the license, until July 30, 2005. It also indicates that OFAC license holders will be subject to certain additional requirements consistent with the revised rule regarding Iraq that Department of Commerce issued today. These include requirements to keep certain records, to secure Commerce Department approval prior to transfer of OFAC-licensed exports to new end-users, and to conform any OFAC-licensed reexports from Iraq to another country to the relevant provisions based on the items being reexported and the country to which they are being reexported.

Paragraph (b)(3) of section 575.533 removes the prior reference to two of three classes of persons with whom transactions were not authorized: (ii) persons on the Defense Department's 55-person Watch List referred to in what had been paragraph (b)(3)(ii), and (iii) persons identified by the 661 Committee pursuant to paragraphs 19 and 23 of United Nations Security Council Resolution 1483, adopted May 22, 2003, referred to in what had been (b)(3)(iii). Transactions with these two classes of person are now prohibited pursuant to Executive Order 13315. As revised, paragraph (b)(3) of section 575.533 now specifically refers only to those persons who are listed in Appendix A to chapter V of title 31, Code of Federal Regulations (commonly referred to as the ''Specially Designated Nationals List''—or ''SDN List'').

Notwithstanding paragraph (b)(3), paragraph (b)(4) of section 575.533 lifts economic sanctions for certain specified entities even though they are Iraqi SDNs and appear on the list in Appendix A of chapter V, title 31, Code of Federal Regulations. This revision makes clear that U.S. persons may engage in economic transactions with these entities and, thereby, contribute to the orderly and expeditious reconstruction of Iraq.

Paragraph (b)(5) of section 575.533 provides that the general license does not authorize transactions with respect to Iraqi cultural property or other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990. Any trade in or transfer of such items, including items with respect to which reasonable suspicion exists that they have been illegally removed, remains prohibited. The note to paragraph (b) (5) refers inquiries concerning particular Iraqi cultural property to the Cultural Property Office at the Department of State.

Paragraph (c) of section 575.533 provides that the effective date paragraphs (a), (b)(1), (b)(3), (b)(4) and (b)(5) of the section is May 23, 2003. The effective date of paragraph (b)(2) of the section is July 30, 2004.

2. Promulgation of General License No. 1 Under Executive Order 13315

Paragraph (a) of General License No. 1 under Executive Order 13315 permits all transactions with state bodies, corporations, or agencies of the former Iraqi regime that are prohibited by section 1 of Executive Order 13315, with four exceptions described in paragraph (b). Paragraph (b)(1) of General License No. 1 specifies that all property and interests in property of those persons named in the Annex to Executive Order 13315 or later determined to be subject to the Executive Order are to remain blocked and subject to the prohibitions and requirements of the Executive Order.

Paragraph (b)(2) of General License No. 1 states that all property and interests in property, including accounts, that were blocked pursuant to subpart B of the Iraqi Sanctions Regulations, 31 CFR part 575, as of May 23, 2003, shall remain blocked. Paragraph (b)(3) of General License No. 1 states that the general license does not permit transactions with those persons that are listed in Appendix A to chapter V of title 31, Code of Federal Regulations (commonly referred to as the ''Specially Designated Nationals List''—or ''SDN List''), except for those organizations listed in paragraph (b)(4).

Notwithstanding paragraph (b)(3), paragraph (b)(4) of General License No. 1 lifts economic sanctions on certain entities, even though they are Iraqi SDNs and are listed in Appendix A to chapter V of Title 31, Code of Federal Regulation. This provision makes clear that U.S. persons may engage in economic transactions with these entities and, thereby, contribute to the orderly and expeditious reconstruction of Iraq. Note that the list of entities in paragraph (b)(4) of section 575.533 and the list in paragraph (b)(4) of General License No. 1 are identical.

Finally, paragraph (b)(5) of General License No. 1 provides that the general license does not authorize transactions with respect to Iraqi cultural property or other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990. Any trade in or transfer of such items, including items with respect to which reasonable suspicion exists that they have been illegally removed, remains prohibited by subpart B of the Regulations. The note to paragraph (b)(4) refers inquiries concerning particular Iraqi cultural property to the Cultural Property Office at the Department of State.

Paragraph (c) of General License No. 1 indicates that the effective date of this license is August 29, 2003. That is the date that Executive Order 13315 became effective.

3. Transactions Authorized Under 31 CFR 575.533 and General License No. 1

Examples of transactions authorized by section 575.533 and General License No. 1 include investment by U.S. persons in Iraq, the importation of goods or services of Iraqi origin (with the exception of the cultural properties described in paragraph (b)(3)), travel-related transactions involving Iraq, the transfer of funds to or from Iraq, and transactions related to transportation to or from Iraq. This authorization, however, does not eliminate the need to comply with other provisions of 31 CFR chapter V or with other applicable provisions of law, including any aviation, financial, or trade requirements of agencies other than OFAC. Such requirements include the Export Administration Regulations (15 CFR parts 730 *et seq.*) administered by the Bureau of Industry and Security, Department of Commerce, and the International Traffic in Arms Regulations (22 CFR chapters 120–130) administered by the Department of State.

Procedural Matters

Because this rule involves a foreign affairs function of the United States, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply.

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Paperwork Reduction Act

The collections of information related to these regulations can be found in 31 CFR part 501. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164.

List of Subjects in 31 CFR Part 575

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Iran, Iraq, Oil imports, Penalties, Petroleum, Petroleum products, Reporting and recordkeeping requirements, Specially designated nationals, Terrorism, Travel restrictions.

■ For the reasons stated in the preamble, 31 CFR part 575 is amended as set forth below:

PART 575—IRAQI SANCTIONS REGULATIONS

■ 1. The authority citation for 31 CFR part 575 is revised to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–513, 104 Stat. 2047–2055 (50 U.S.C. 1701 note); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317.; E.O. 13350 of July 29, 2004.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 575.533 is revised to read as follows:

§ 575.533—Certain new transactions.

(a) *New transactions.* Except as provided in paragraph (b) of this section, on or after May 23, 2003 and prior to July 30, 2004, all transactions that are otherwise prohibited by subpart B of this part are authorized.

Note to § 575.533(a): This authorization does not eliminate the need to comply with Executive Order 13315, ''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions,'' or other provisions of 31 CFR chapter V, or with other applicable provisions of law, including any aviation, financial, or trade requirements of agencies other than the Department of the Treasury's Office of Foreign Assets Control. Such requirements include the Export Administration Regulations (15 CFR parts 730 through 799) administered by the Bureau of Industry and Security, Department of Commerce, and the International Traffic in Arms Regulations (22 CFR parts 120 through 130) administered by the Department of State.

(b) *Continued blocking, special provisions for certain exports and reexports, and additional conditions.*

(1) All property and interests in property that were blocked as of May 23, 2003, pursuant to Executive Orders 12722 or 12724, or subpart B of this part, remain blocked and subject to the prohibitions and requirements of this part.

(2)(i) Any specific license issued by the Treasury Department before July 30, 2004, for the exportation from the United States, or, if subject to U.S. jurisdiction, the exportation or reexportation from a third country to Iraq of any items (including technical data or other information) controlled by the Department of Commerce under the Export Administration Regulations (15 CFR parts 730 through 799) for exportation to Iraq shall expire on the date set forth in that license, or, if no expiration date is provided in that license, on July 30, 2005.

Note to § 575.533(b)(2)(i): Effective July 30, 2004, with the termination of the national emergency declared in Executive Order 12722 and the revocation of that Executive order, OFAC's authority to license exports and reexports to Iraq ceases, and the licensing jurisdiction for exports and reexports to Iraq will be transferred back to the Department of Commerce. All OFAC license applications pending but not acted upon before July 30, 2004, will be returned to applicants and applicants will be required to resubmit them to the Department of Commerce using the appropriate Department of Commerce forms. Moreover, as July 30, 2004, OFAC will not accept any applications for licenses for exports or reexports to Iraq. On or after July 30, 2004, all inquiries and applications regarding such exports or reexports are to be made to the Exporter Services Office, Bureau of Industry and Security, Department of Commerce (telephone: 202–482–4811).

(ii) Persons issued a specific license by the Treasury Department before July 30, 2004, for the exportation from the United States, or if subject to U.S. jurisdiction, the exportation or reexportation from a third country to Iraq, of any items (including technical data or other information) controlled by the Department of Commerce under the Export Administration Regulations (15 CFR parts 730 through 799) must maintain such records as are required by 15 CFR part 746 of the Export Administration Regulations.

Note to § 575.533(b)(2)(ii): Pursuant to an amendment to the Export Administration Regulations (15 CFR parts 730 through 799), effective July 30, 2004, further authorization by the Department of Commerce will not be required for exports or reexports licensed by the Department of the Treasury until the Treasury Department license expires by its own terms, or, if no expiration date is provided in the license, until July 30, 2005. Those holding specific licenses issued by the Treasury Department for exports or reexports to Iraq must comply with the recordkeeping requirements found in 15 CFR 746.3 of the Export Administration Regulations.

(iii) Items licensed by the Treasury Department for exportation or reexportation to Iraq may not be transferred within Iraq to a new end-user without further authorization from the Bureau of Industry and Security, Department of Commerce. Reexportation of items originally authorized pursuant to a specific license issued by the Treasury Department must conform to the relevant provision of the Export Administration Regulations (15 CFR parts 730 through 799) based on the items being reexported and the country to which they are being reexported.

Note to § 575.533(b)(2)(iii): Pursuant to an amendment to the Export Administration Regulations (15 CFR parts 730 through 799), effective July 30, 2004, further authorization by the Department of Commerce will be required for exports or reexports licensed by the Department of the Treasury prior to the transfer of such items within Iraq to a new end-user. The amendment also requires that any reexportation of items pursuant to a specific license issued by the Treasury Department must conform to the relevant provision of the Export Administration Regulations (15 CFR parts 730 through 799) based on the country to which the items are being reexported.

Note to § 575.533(b)(2): The term ''controlled by the Department of Commerce'' means subject to a license requirement under the Department of Commerce's Export Administration Regulations (EAR). Items subject to a license requirement under the EAR include items on the Commerce Control List that require a license for exportation or reexportation to Iraq pursuant to 15 CFR part 742 or 15 CFR 746.3, as well as items and activities that require a license under the end-use and end-user provisions of 15 CFR part 744. To inquire whether particular items are controlled by the Department of Commerce under the Export Administration Regulations for exportation to Iraq, the exporter or reexporter should contact the Department of Commerce, Bureau of Industry and Security.

(3) This section does not authorize any transactions with persons listed in

appendix A to chapter V of title 31, Code of Federal Regulations, except for those organizations listed in paragraph (b)(4) of this section.

(4) Notwithstanding paragraph (b)(3) of this section, and except as provided in paragraphs (b)(1), (2) and (5), on or after May 23, 2003, all transactions that are otherwise prohibited by subpart B of this part are authorized for the following Iraqi state bodies, corporations or agencies that are listed in Appendix A to chapter V, title 31, Code of Federal Regulations, but that are now operating under the authority of the coalition, an interim or transitional Iraqi government, or a subsequent permanent Iraqi government:

Agricultural Cooperative Bank
Al-Rafidain Shipping Company
Industrial Bank of Iraq
Iraq Reinsurance Company
Iraqi Airways
Iraqi-Jordan Land Transport Company
Iraqi State Enterprise for Maritime Transport
Rafidain Bank
Rasheed Bank
Real Estate Bank

Note to § 575.533(b)(4): Numerous other Iraqi state bodies, corporations, or agencies are not listed in Appendix A to chapter V, 31 CFR. This section permits transactions with such entities on or after May 23, 2003. But for the operation of this paragraph (b)(4), these entities would be blocked under subpart B because they meet the definition of 'Government of Iraq' in 31 CFR 575.306 or 'entity of the Government of Iraq' in 31 CFR 575.304, whether or not they appeared in appendix A to chapter V, 31 CFR.

(5) This section does not authorize any transactions with respect to Iraqi cultural property or other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990. Any trade in or transfer of such items, including items with respect to which reasonable suspicion exists that they have been illegally removed.

Note to § 575.533(b)(5): Questions concerning whether particular Iraqi cultural property or other items are subject to this paragraph should be directed to the Cultural Property Office, U.S. Department of State, tel. 202–619–6612, fax 202–260–4893, Web site *http://www.exchanges.state.gov/culprop,* e-mail *culprop@pd.state.gov.*

(c) *Effective date.* Paragraphs (a), (b)(1), (b)(3), (b)(4) and (b)(5) of this section are effective May 23, 2003. Paragraph (b)(2) of this section is effective July 30, 2004.

[The following General License No. 1 will not appear in the Code of Federal Regulations]

General License No. 1 Issued Pursuant to Executive Order 13315 of August 28, 2003

(a) Except as provided in paragraph (b) of this general license, on or after August 29, 2003, all transactions with state bodies, corporations, or agencies of the former Iraqi regime that are otherwise prohibited by section 1 of Executive Order 13315 are permitted.

Note to paragraph (a): This authorization does not eliminate the need to comply with other provisions of 31 CFR chapter V or with other applicable provisions of law, including any aviation, financial, or trade requirements of agencies other than the Department of the Treasury's Office of Foreign Assets Control. Such requirements include the Export Administration Regulations (15 CFR parts 730 through 799) administered by the Bureau of Industry and Security, Department of Commerce, and the International Traffic in Arms Regulations (22 CFR parts 120 through 130) administered by the Department of State.

(b)(1) All property and interests in property of persons listed in the Annex to Executive Order 13315 or determined to be subject to the Executive Order pursuant to section 1(b) thereof, remain blocked and subject to the prohibitions and requirements of Executive Order 13315.

(2) All property and interests in property blocked as of May 23, 2003, pursuant to Executive Orders 12722 or 12724, or the Iraqi Sanctions Regulations, 31 CFR part 575, remain blocked.

(3) This general license does not authorize any transactions with persons listed in appendix A to chapter V of title 31, Code of Federal Regulations, except for those organizations listed in paragraph (b)(4) of this License.

(4) Notwithstanding paragraph (b) (3) of this License, and except as provided in paragraphs (b)(1), (2) and (5), on or after August 29, 2003, all transactions otherwise prohibited by section 1 of Executive Order 13315 are permitted with the following Iraqi state bodies, corporations or agencies that are listed in appendix A to chapter V of title 31, Code of Federal Regulations, but that are now operating under the authority of the coalition, a transitional Iraqi government, or a subsequent permanent Iraqi government:

Agricultural Cooperative Bank
Al-Rafidain Shipping Company
Industrial Bank of Iraq
Iraq Reinsurance Company
Iraqi Airways
Iraqi-Jordan Land Transport Company
Iraqi State Enterprise for Maritime Transport
Rafidain Bank
Rasheed Bank
Real Estate Bank

(5) This License does not authorize any transactions with respect to Iraqi cultural property or other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990. Any trade in or transfer of such items, including items with respect to which reasonable suspicion exists that they have been illegally removed, remains prohibited by Executive Order 13315.

Note to paragraph (b)(5): Questions concerning whether particular Iraqi cultural property or other items are subject to this paragraph should be directed to the Cultural Property Office, U.S. Department of State, tel. 202/619B6612, fax 202/260B4893, Web site *http://www.exchanges.state.gov/culprop,* e-mail *culprop@pd.state.gov.*

(c) This general license is effective August 29, 2003.

Dated: July 28, 2004.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 28, 2004.

Juan C. Zarate,

Assistant Secretary (Terrorist Financing), Department of the Treasury.

[FR Doc. 04–17615 Filed 7–29–04; 2:56 pm]

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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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- New Jersey; published 7-23-04

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- Employment authorization documents; issuance; published 7-30-04

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- Legal processes; published 6-30-04

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- Records and donated historical materials use; research room procedures; published 6-30-04

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Federal Aviation Administration

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- Transport airplane fuel tank systems; special maintenance program requirements; compliance extension; aging airplane program update; published 7-30-04

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- Agusta S.p.A.; published 6-25-04
- Eurocopter Deutschland; published 6-25-04
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Federal Motor Carrier Safety Administration

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- Hazardous materials transportation—-
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Almonds grown in—
- California; published 7-6-04

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  - Oceola, AR; safety zone; published 7-22-04
- San Francisco Bay, San Francisco and Oakland, CA; security zones; published 6-21-04

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- Crude oil produced from Federal leases; valuations and reporting provisions
  - Technical amendment; published 5-24-04

PENSION BENEFIT GUARANTY CORPORATION

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- Allocation of assets—
  - Interest assumptions for valuing and paying benefits; published 7-15-04

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AGENCY FOR INTERNATIONAL DEVELOPMENT

USAID programs; religious organizations participation; comments due by 8-6-04; published 6-7-04 [FR 04-12654]

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Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

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- Oregon and Washington; comments due by 8-3-04; published 7-19-04 [FR 04-16272]

Shell egg voluntary grading; comments due by 8-2-04; published 6-2-04 [FR 04-12201]

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- Birds, rats, and mice; regulations and standards; comment request; comments due by 8-3-04; published 6-4-04 [FR 04-12692]

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- Gypsy moth; comments due by 8-6-04; published 6-7-04 [FR 04-12757]

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- Pine shoot beetle; comments due by 8-6-04; published 6-7-04 [FR 04-12758]

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Economic Analysis Bureau

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- BE-22; annual survey of selected services transactions with unaffiliated foreign persons; comments due by 8-6-04; published 6-7-04 [FR 04-12788]

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National Oceanic and Atmospheric Administration

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- Right whale ship strike reduction; comments due by 8-2-04; published 6-1-04 [FR 04-12356]

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- Northeastern United States fisheries—
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  - Coastal pelagic species; comments due by 8-4-04; published 7-20-04 [FR 04-16471]
  - Pacific Coast groundfish; comments due by 8-2-04; published 7-7-04 [FR 04-15379]
  - Pacific Fishery Management Council; environmental impact statement; scoping meetings; comments due by 8-2-04; published 5-24-04 [FR 04-11663]
  - West Coast salmon; comments due by 8-4-04; published 7-20-04 [FR 04-16356]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Government Paperwork Elimination Act; implementation:
- Commission issuances; electronic notification; comments due by 8-2-04;

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Industrial-commercial-institutional steam generating units; comments due by 8-6-04; published 7-7-04 [FR 04-15205]

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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.archives.gov/federal_register/public_laws/public_laws.html*.

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H.R. 3846/P.L. 108–278

Tribal Forest Protection Act of 2004 (July 22, 2004; 118 Stat. 868)

S. 1167/P.L. 108–279

To resolve boundary conflicts in Barry and Stone Counties in the State of Missouri. (July 22, 2004; 118 Stat. 872)

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