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Washington, DC
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Contents

Federal Register

Vol. 65, No. 131

Friday, July 7, 2000

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Family Friends/Volunteer Senior Aides (VSA) projects; training and technical assistance, 42002

Agriculture Department
See Federal Crop Insurance Corporation
See Forest Service
NOTICES
Emergency declarations:
California—
Glassy-winged sharpshooter, 41930

Air Force Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 41967–41968

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
PROPOSED RULES
Coal mine safety and health:
Respirable coal mine dust; concentration determination, 42067–42122, 42184–42186
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42003–42004
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
Control and prevention; related applied research, 42004–42006
Faith Communities in Countries Targeted by the Leadership and Investment in Fighting the Epidemic (LIFE) Initiative; program development & technical assistance, 42006–42008

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Administration for Native Americans, 42008–42014

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 41941–41942

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Pakistan, 41961–41962
Singapore, 41962

Commodity Futures Trading Commission
NOTICES
Meetings:
Agricultural Advisory Committee, 41962

Comptroller of the Currency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42062–42063

Consumer Product Safety Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 41962–41963

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
AmeriCorps* VISTA programs—
Higher education and non-profit service-learning programs, 41963–41966

Customs Service
NOTICES
Tariff-rate quotas:
Tuna fish, 42063

Defense Department
See Air Force Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 41966–41967

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 41968–41969

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 42032–42034

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality planning purposes; designation of areas:
Ohio and Kentucky; correction, 42064

PROPOSED RULES
Water supply:
Underground injection control program—
Class I municipal wells in Florida, 42233–42245
NOTICES
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
Colorado, 41981–41982
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 41982–41983
Weekly receipts, 41982
Meetings:
Technical workshop on issues associated with considering developmental changes in behavior and anatomy when assessing exposure to children, 41983–41984
Pesticide, food, and feed additive petitions:
AgriVir, LLC, 41984–41988

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 41869–41871
Saab, 41871–41873
PROPOSED RULES
Airworthiness directives:
Rolls-Royce, plc, 41884–41885
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Part 25 airplanes; Terrain Awareness and Warning System (TAWS), 42053–42058
Transport category airplanes; design cruise speed and design dive speed, 42058

Federal Communications Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 41988–41989
Meetings:
Specialized mobil radio service in the general category band (851-854 MHz) and upper band (861-865 MHz) pre-auction seminar, 41989
Rulemaking proceedings; petitions filed, granted, denied, etc., 41990

Federal Crop Insurance Corporation
NOTICES
Crop revenue coverage:
Canola/rapeseed, corn, feed barley, soybeans, sunflowers, spring wheat, and winter wheat, 41930–41937
Corn, grain sorghum, soybeans, cotton, rice, and wheat, 41937–41940

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practice standards, 41873–41874
PROPOSED RULES
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practice standards, 41885–41891
NOTICES
Electric rate and corporate regulation filings:
Central Hudson Gas & Electric Corp., et al., 41972–41975
CinCap VI, LLC, et al., 41976–41978
JPower, Inc., et al., 41978
Merchant Energy Group of the Americas, Inc., et al., 41978–41981
Meetings:
Williams Gas Pipelines Central, Inc.; settlement conference, new location, 41981
Reports and guidance documents; availability, etc.:
Off-the-record communications, 41981
Applications, hearings, determinations, etc.:
Consumers Energy Co., 41969
Delmarva Power & Light Co., 41969–41970
New York Independent System Operator, Inc., 41970
Panda Perkiomen Power, L.P., 41970–41971
UtiliCorp United, Inc., 41971
Vermont Yankee Nuclear Power Corp., et al., 41971
Williams Gas Pipelines Central, Inc., 41971

Federal Highway Administration
PROPOSED RULES
Statewide and metropolitan transportation planning; extension, 41891–41892
Transportation decisionmaking procedures; public parks, wildlife, and waterfowl refuges, and historic sites protection, 41892
NOTICES
Environmental statements; notice of intent:
Albany County, NY, 42058–42059

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 41990

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 41990–41995
Prohibited trade practices:
BUY.COM Inc., 41995–41997
Office Depot, Inc., 41997–41998
Swisher International, Inc., et al., 41998–42000
Value America, Inc., 42000–42002

Federal Transit Administration
PROPOSED RULES
Statewide and metropolitan transportation planning; extension, 41891–41892
Transportation decisionmaking procedures; public parks, wildlife, and waterfowl refuges, and historic sites protection, 41892

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Zayante band-winged grasshopper, 41917–41929
NOTICES
Endangered and threatened species permit applications, 42024–42025
Environmental statements; availability, etc.:
Incidental take permits—
Travis County, TX; golden-cheeked warbler, 42025

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Salinomycin, bacitracin methylene disalicylate, roxarsone, 41876–41877
Food additives:
Adjuvants, production aids, and sanitizers—
1,6-hexanediamine, etc., 41874–41876
NOTICES
Food additive petitions:
Milliken & Co. et al., 42014–42017
Human drugs:
New drug applications—
Caramiphen edisylate; refusal, 42017
Isosobine dinitrate; approval withdrawn, 42018–42019
Reports and guidance documents; availability, etc.:
Impurities in new veterinary drug substances, 42020–42021
Impurities in new veterinary medicinal products, 42019–42020

Foreign Assets Control Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 42063

Forest Service
NOTICES
Meetings:
Willamette Provincial Advisory Committee, 41941

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 41966–41967

Geological Survey
NOTICES
Grants and cooperative agreements; availability, etc.:
Williamson & Associates; other parties invited, 42025–42026

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 42021–42022
Meetings:
Medicare Program; Hospital Outpatient Prospective Payment System (PPS), 42022

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Competitive grant programs; comprehensive review, 42189–42231

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 42023–42024
Section 202 projects; assisted living conversion program; correction, 42064

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Tapered rollered bearings and parts, finished and unfinished, from—
China, 41945–41950
Antidumping and countervailing duties:
Administrative review requests, 41942–41944
Five-year (sunset) reviews—
Final results and revocations, 41944
Countervailing duties:
Grain-oriented electrical steel from—
Italy, 41950–41957
Scope rulings; list, 41957–41960

International Trade Commission
NOTICES
Import investigations:
Steel concrete reinforcing bars from—
Various countries, 42029–42030

Justice Department
NOTICES
Pollution control; consent judgments:
Mobil Oil Corp., 42030–42031

Labor Department
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42031–42032

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Resource Advisory Councils, 42026
Meetings:
Resource Advisory Councils—
Eastern Montana, 42027
New Mexico, 42026–42027
Recreation management restrictions, etc.:
Off-highway-vehicles; national strategy, 42027

Legal Services Corporation
RULES
Timekeeping requirement, 41879–41882

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Decommissioning activities, 41892–41903
Royalty management:
Indian leases; gas valuation regulations; amendments
Correction, 42064

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Respirable coal mine dust; concentration determination, 42067–42122 42184–42186
Samples used to determine respirable dust level; procedures revocation, 42121–42185
Underground coal mine operators' dust control plans and compliance sampling for respirable dust, 42185–42187

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 41966–41967

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 41883
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 41960
National Estuarine Research Reserve System, 41960–41961

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 42028

Nuclear Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Northeast Nuclear Energy Co., 42038
Applications, hearings, determinations, etc.:
Baltimore Gas and Electric Co., 42036–42038

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 42034–42035
Reporting and recordkeeping requirements, 42035–42036

Patent and Trademark Office
PROPOSED RULES
Freedom of Information Act and Privacy Act; implementation, 41903–41917

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Bank of Oklahoma, et al., 42247–42271

Personnel Management Office
RULES
Excepted service:
Persons with psychiatric disabilities; appointments, 41867–41868
Pay administration:
Payments during evacuation, 41868–41869

Postal Service
RULES
Domestic Mail Manual:
SAVE verification procedures and revisions; First-Class and Standard Mail (A) automation letter mail; combined postage payment standards, 41877–41879

Presidential Documents
PROCLAMATIONS
Special observances:
ADA Month, Spirit of the (Proc. 7327), 41865–41866

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Colorado River interim surplus criteria, 42028–42029

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC; correction, 42064
Boston Stock Exchange, Inc., 42041–42048
Chicago Stock Exchange, Inc., 42048–42049
Government Securities Clearing Corp., 42051–42052
National Securities Clearing Corp.; correction, 42065
New York Stock Exchange, Inc., 42052–42053
Pacific Exchange, Inc.; correction, 42064
Applications, hearings, determinations, etc.:
First Allmerica Financial Life Insurance Co. et al.; correction, 42065
Valley Forge Life Insurance Co. et al.; correction, 42065
Van Kampen Funds Inc. and Van Kampen Focus Portfolios, 42038–42041

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Arkansas and Missouri Railroad Co., 42059
Puget Sound & Pacific Railroad Co., 42059
Wisconsin Central Ltd., 42059–42060

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Customs Service
See Foreign Assets Control Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42060–42062

FederalRegister / Vol.65

Part II
Department of Labor, Mine Safety and Health Administration, and Department of Health and Human Services, Centers for Disease Control, 42067–42187

Part III
Department of Health and Human Services, Health Resources and Services Administration, 42189–42231

Part IV
Environmental Protection Agency, 42233–42245

Part V
Department of Labor, Pension and Welfare Benefits Administration, 42247–42271

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

7327 41865

5 CFR

3 41867
213 41867
315 41868
550 41868

14 CFR

39 (2 documents) 41869, 41871

Proposed Rules:

39 41884

18 CFR

284 41873

Proposed Rules:

284 41885

21 CFR

178 41874
558 41876

23 CFR

Proposed Rules:

450 41891
771 41892
1410 41891
1420 41892
1430 41892

30 CFR

Proposed Rules:

70 (2 documents) 42122
72 (2 documents) 42068
75 (2 documents) 42122
90 (2 documents) 42122
250 41892

37 CFR

Proposed Rules:

102 41903

39 CFR

111 41877

Proposed Rules:

146 42248

45 CFR

1635 41879

49 CFR

Proposed Rules:

613 41891
621 41891
622 41892
623 41892

50 CFR

679 41883

Proposed Rules:

17 41917

Federal Register
Vol. 65, No. 131
Friday, July 7, 2000

Presidential Documents

Title 3—

The President

Proclamation 7327 of July 1, 2000

Spirit of the ADA Month, 2000

By the President of the United States of America

A Proclamation

The enactment of the Americans with Disabilities Act (ADA) 10 years ago this month signaled a transformation in our Nation's public policies toward people with disabilities. America is now a dramatically different—and better—country because of the ADA.

In the last 10 years, we have worked hard to eliminate harmful stereotypes and have grown to understand disability as a natural part of the human experience. We are taking steps, such as renovating and constructing public accommodations to make them fully accessible, to ensure that people with disabilities are fully integrated into our communities and workplaces. And we have come to appreciate that people with disabilities are a key element—and an untapped resource—in sustaining our Nation's historic economic growth.

Throughout our Administration, Vice President Gore and I have worked hard to achieve the ADA's core goals—equality of opportunity, full participation, independent living, and economic self-sufficiency. Our Administration has vigorously defended the ADA in court cases across the Nation; we are collaborating with State Medicaid directors to implement the Supreme Court's 1999 *Olmstead* decision, which prohibits unjustified isolation of institutionalized persons with disabilities; we helped ensure that 80 percent of America's public transit buses are now accessible; we are implementing the Ticket to Work and Work Incentives Improvement Act, which I proudly signed into law last December; we have worked closely with schools and colleges to improve the enrollment, retention, and graduation of students with disabilities; and my Task Force on Employment of Adults with Disabilities is developing far-reaching policies for a comprehensive, coordinated employment agenda.

We still have much to accomplish. Because the many barriers confronting people with disabilities took generations to develop, breaking them down requires consistent, coordinated, and farsighted effort. We must work aggressively to increase the employment rates of people with disabilities by attacking a range of work disincentives, including barriers to education, health care, technology, housing, and transportation. We must provide real choices for people with disabilities to live and work in their communities with the necessary services and supports. And we must be vigilant in protecting the rights we have secured through decades of legal activism. I am encouraged that the first 10 years of the ADA's life have provided us with a solid foundation for meeting these challenges.

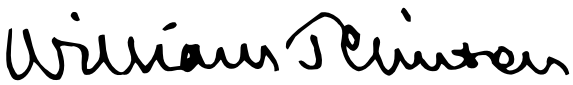
To mark the ADA's 10th anniversary and the 25th anniversary of the Individuals with Disabilities Education Act (IDEA), the American Association of People with Disabilities has organized a nationwide ''Spirit of ADA'' Torch Relay. Twenty-four cities from coast to coast are hosting official relay events, and hundreds of communities are organizing additional local events as part of this national celebration. The Spirit of ADA's organizing theme is ''Renew the Pledge'' to encourage individuals, organizations, and government entities to reaffirm their commitment to the principles of the ADA and IDEA. Vice

President Gore and I are proud to join in the celebration and to renew our own pledge to help advance the cause of disability rights.

Promoting disability rights not only improves the lives of the 54 million Americans with disabilities, it improves all of our lives. As President Franklin Roosevelt recognized more than 60 years ago, in words that are now inscribed on the FDR Memorial in our Nation's capital: ''No Country, however rich, can afford the waste of its human resources.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, 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 2000 as Spirit of the ADA Month, 2000. I urge government officials, business people, community leaders, educators, and all the people of the United States, to celebrate the contributions people with disabilities have made, and continue to make, to the progress and prosperity of our Nation, and to renew our commitment to upholding the nondiscrimination principles of the ADA and IDEA.

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



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Rules and Regulations

Federal Register
Vol. 65, No. 131
Friday, July 7, 2000

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PARTS 3, 213, 315

RIN 3206–AI94

Appointments of Persons With Psychiatric Disabilities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations creating a new Governmentwide excepted appointing authority, with noncompetitive conversion to the competitive service authorized by Executive Order 13124, for persons with psychiatric disabilities. The regulations also abolish two excepted service appointing authorities that relate to persons with psychiatric disabilities, and make technical corrections.

EFFECTIVE DATES: August 7, 2000.

Conformity date: For all new appointments under 5 CFR 213.3102(gg), agencies may begin to use the authority on August 7, 2000. All individuals who are currently serving under the 2 authorities that will be abolished by this regulation, 5 CFR 213.3102(h) and 213.3202(k), must be converted to the new appointment, 5 CFR 213.3102(gg), by January 3, 2001.

FOR FURTHER INFORMATION CONTACT: John Riedel-Alvarez or Kitty Kobert on (202) 606–1059, TTY (202) 606–0023, or FAX (202) 606–0927.

SUPPLEMENTARY INFORMATION: The Presidential Task Force on Employment of Adults with Disabilities was created in 1998 to address the underemployment of people with disabilities. Its first report, ''Recharting the Course,'' recommended that OPM look into paralleling the excepted service hiring standards of adults with psychiatric disabilities with the excepted service hiring standards of individuals with mental retardation and severe physical disabilities. After careful review of the standards, we agreed they all should be the same.

As a result, we issued proposed regulations on March 17, 2000, to amend the Civil Service Rules to reflect Executive Order 13124, June 4, 1999, permitting persons with psychiatric disabilities to be converted to the competitive service after 2 years of satisfactory service. In order to ensure that as many people with psychiatric disabilities are covered as possible, we proposed creating a new excepted service appointing authority for persons with psychiatric disabilities. To avoid confusion and duplication, we also proposed abolishing 2 existing excepted service appointing authorities for persons with psychiatric disabilities that were not broadly defined.

We received comments on the regulations from 4 Federal agencies, 2 advocacy organizations, 1 State agency, and 1 individual.

Comments

One Federal agency was confused about how the authority will be implemented based on the proposed wording. Specifically, it was unclear whether those who have certification in subparagraph (2) are the only ones eligible for noncompetitive conversion. It was also unclear whether temporary appointments may be made under the (gg) authority. Therefore, we are revising the authority to clarify a number of items as follows:

(1) We are eliminating the subparagraphs to make it clear that either individuals who served under temporary appointments or those who receive certification may be appointed under the (gg) authority. After 2 years of satisfactory service under the authority, they are eligible for noncompetitive conversion to the competitive service.

(2) On the effective date of this regulation, and through an OPM Notice of Policy Information (being issued concurrently and available on OPM's website, *www.opm.gov*), agencies may use 5 CFR 213.3102(i)(3) to make temporary appointments of persons with psychiatric disabilities. These temporary appointments may be used to fulfill the requirements of the new (gg) authority. [Temporary appointments are defined for the excepted service in 5 CFR 213.104(a)(1).] This flexibility, and adding the language to (gg), will make it clear that temporary appointments are not authorized under (gg), but under (i)(3).

(3) We are also clarifying that noncompetitive conversion of those who have 2 years of satisfactory performance under (gg) is at the discretion of the agency, rather than a right of the individual.

One Federal agency suggested that time under temporary appointments is permissible for noncompetitive conversion to a permanent position in the competitive service, changing the conversion requirement in 5 CFR 315.709. We did not adopt this suggestion. There is no basis for a contention that temporary status in the excepted service confers permanent status in the competitive service.

Two advocacy organizations favored language found in the ADA that refers to certifying individuals under the (gg). We agree it is hard to assess and certify that an individual with a psychiatric illness is ''likely to succeed in the performance of duties.'' Instead, we will use the language suggested by the 2 organizations.

Two advocacy organizations also suggested adding community rehabilitation programs to the list of those who may certify individuals with psychiatric disabilities. We are not changing the authority at this time; we want to research this further before adopting it as an option for agencies.

One Federal agency recommended that OPM add language to describe how the disabilities are evidenced, similar to language in the abolished 5 CFR 213.3202(k). We believe a better place to provide more information is in the ''People with Disabilities in the Federal Government—An Employment Guide.'' OPM will update this resource guide to add more information for agencies on psychiatric disabilities.

Implementation

Agencies must move those who are currently serving under the soon-to-be-abolished 5 CFR 213.3102(h) and 5 CFR 213.3202(k) authorities to the new authority, 5 CFR 213.3102(gg), as soon as possible. Those individuals may serve the remaining time under the (gg) and be eligible for noncompetitive conversion. A current employee's service under 5 CFR 213.3102(h) or 5 CFR 3202(k) will count toward the 2-

year period needed for noncompetitive conversion.

OPM's Guide to Personnel Data Standards and The Guide to Processing Personnel Actions will be updated to reflect the new changes. These Guides are available on OPM's website, www.opm.gov.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 3, 213, and 315

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 3, 213, and 315 of title 5, Code of Federal Regulations, as follows:

PART 3—NONCOMPETITIVE ACQUISITION OF STATUS (RULE III)

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

Authority: 5 U.S.C. 3301, 3302.

2. In § 3.1, paragraph (b)(3) is added to read as follows:

§ 3.1 Classes of persons who may noncompetitively acquire status.

* * * * *

(b) * * *

(3) An employee with a psychiatric disability who completes at least 2 years of satisfactory service in a position excepted from the competitive service.

PART 213—EXCEPTED SERVICE

3. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*, and Pub. L. 105–339.

4. In § 213.3102, paragraph (h) is removed and reserved. Paragraph (gg) is added to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(gg) Positions when filled by persons with psychiatric disabilities who have demonstrated their ability to perform satisfactorily under a temporary appointment [such as one authorized in 213.3102(i)(3)] or who are certified as likely to be able to perform the essential functions of the job, with or without reasonable accommodation, by a State vocational rehabilitation counselor, a U.S. Department of Veterans Affairs Veterans Benefits Administration or Veterans Health Administration psychologist, vocational rehabilitation counselor, or psychiatrist. Upon completion of 2 years of satisfactory service under this authority, the employee can be converted, at the discretion of the agency, to competitive status under the provisions of Executive Order 12125 as amended by Executive Order 13124.

* * * * *

5. In § 213.3202, paragraph (k) is removed and reserved.

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

6. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.611 also issued under Section 511, Pub. L. 106–117.

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

7. Section 315.709 is amended by revising the section heading, the introductory text of paragraph (a), and paragraphs (a)(1), and (b)(2) to read as follows:

§ 315.709 Employees who are mentally retarded, severely physically handicapped, or have psychiatric disabilities serving under Schedule A appointments.

(a) *Coverage.* Employees appointed under §§ 213.3102(t), (u), and (gg) of this chapter may have their appointments converted to career or career-conditional appointments when they:

(1) Complete 2 or more years of satisfactory service, without a break of more than 30 days, under nontemporary Schedule A appointments.

* * * * *

(b) * * *

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under §§ 213.3102(t), (u), or (gg) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

* * * * *

[FR Doc. 00–17125 Filed 7–3–00; 11:20 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AI78

Payments During Evacuation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to raise the age requirement for payment of the maximum per diem rate for a dependent of an evacuated civilian employee from age 11 to age 12. This applies to evacuations in the United States because of natural disasters or for military or other reasons that create an imminent danger to life. This final rule makes OPM's regulations consistent with Department of Defense (DOD) evacuation regulations, which require that an evacuated dependent of a uniformed member be 12 years of age or older to receive the maximum per diem rate.

DATES: *Effective Date:* The regulations are effective and applicable on August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Roger Knadle, (202) 606–2858, FAX: (202) 606–0824, or email at payleave@opm.gov.

SUPPLEMENTARY INFORMATION: Office of Personnel Management (OPM) regulations on payments during evacuation are found in subpart D of 5

CFR part 550. The regulations are based on provisions of law in 5 U.S.C. 5522–5524, 5526, and 5527, and on authority in Executive Order 10982, 3 CFR 1959–1963, p. 502. Federal agencies make evacuation payments under these authorities to employees and/or their dependents who are ordered to be evacuated because of natural disasters or for military or other reasons that create imminent danger to the lives of the employees or their dependents.

On December 15, 1999, OPM published proposed changes in the evacuation pay regulations in the **Federal Register** (64 FR 69936), as requested by the Department of Defense (DOD). We proposed to increase the age requirement for payment of the maximum per diem rate for dependents of evacuated civilian employees from age 11 to age 12. We also proposed to compute the maximum per diem rate by using the ''lodgings-plus per diem system,'' as defined in section 300–3.1 of the Federal Travel Regulation.

The **Federal Register** notice provided that OPM must receive comments on the proposed regulations within 30 days, or by January 14, 2000. We received no comments on the proposed regulations. Therefore, we are adopting the proposed regulations as final without any substantive changes.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management

Janice R. Lachance,

Director.

Accordingly, OPM is amending subpart D of part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart D—Payments During Evacuation

1. The authority citation for subpart D of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963, p. 502.

2. In § 550.401, paragraph (a) is revised to read as follows:

§ 550.401 Purpose, applicability, authority, and administration.

(a) *Purpose.* This subpart provides regulations to administer subchapter III (except sections 5524a and 5525) of chapter 55 of title 5, United States Code. The regulations provide for Governmentwide uniformity in making payments during an evacuation to employees or their dependents, or both, who are evacuated in the United States because of natural disasters or for military or other reasons that create imminent danger to their lives.

* * * * *

3. In § 550.402, the definition of *United States area* is removed, and a new definition of *United States* is added in alphabetical order to read as follows:

§ 550.402 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any territory or possession of the United States.

4. In § 550.405, paragraphs (a) and (b)(1) are revised to read as follows:

§ 550.405 Determination of special allowances.

* * * * *

(a) An agency must determine the travel expenses and per diem for an evacuated employee and the travel expenses for his or her dependents in accordance with the Federal Travel Regulation (FTR) and any applicable implementing agency regulations, whether or not the employee or dependents are actually covered by or subject to the FTR. In addition, an agency may authorize per diem for dependents of an evacuated employee at a rate equal to the rate payable to the employee, as determined in accordance with the FTR (except that the rate for dependents under 12 years of age is one-half this rate), whether or not the employee or dependents are actually covered by or subject to the FTR. Per diem for an employee and his or her dependents is payable from the date of departure from the evacuated area through the date of arrival at the safe haven, including any period of delay en route that is beyond an evacuee's control or that may result from evacuation travel arrangements.

(b) * * *

(1) An agency must compute the applicable maximum per diem rate by using the ''lodgings-plus per diem system,'' as defined in the FTR, for the employee and each dependent who is 12 years of age or over. For each dependent under 12 years of age, the per diem rate is one-half of the applicable maximum per diem rate for employees and dependents who are 12 years of age or over. An agency may pay these maximum rates for a period not to exceed the first 30 days of evacuation.

* * * * *

[FR Doc. 00–17193 Filed 7–6–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–338–AD; Amendment 39–11809; AD 2000–09–01 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects and clarifies information in an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model DC–8 series airplanes. That AD currently requires a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; repetitive inspections of the wire bundle and door latch rollers to detect damage; and repair or replacement of damaged components. That AD also requires, among other actions, modification of the indication and hydraulic systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This document corrects two errors that resulted in the incorrect references of two paragraphs. This correction is necessary to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage.

DATES: Effective June 7, 2000.

The incorporation by reference of National Aircraft Service, Inc. (NASI) Service Bulletin SB–99–01, Revision A, dated October 15, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 7, 2000 (65 FR 25627, May 3, 2000).

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 24, 2000, the Federal Aviation Administration (FAA) issued AD 2000–09–01, amendment 39–11709 (65 FR 25627, May 3, 2000), which applies to certain McDonnell Douglas Model DC–8 series airplanes. That AD supersedes AD 93–20–02, amendment 39–8709 (58 FR 53635, October 18, 1993) to continue to require a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; repetitive inspections of the wire bundle and door latch rollers to detect damage; and repair or replacement of damaged components. That AD also requires, among other actions, modification of the indication and hydraulic systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. That AD was prompted by the FAA's determination that certain main deck cargo door systems do not provide an adequate level of safety; the latching and locking mechanisms are not of adequate design to prevent structural deformation in the event of component jamming; and that there is an absence of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. The actions required by that AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage.

Need for the Correction

Since the issuance of AD 2000–09–01, the FAA has reviewed the wording of paragraphs (a), (b), (g)(2), and (g)(3) of the AD and finds that clarification is necessary. Paragraph (a) of AD 93–20–02 was redesignated as paragraph (b) in AD 2000–09–01. Paragraph (b) of AD 93–20–02 was redesignated as paragraph (a) in AD 2000–09–01. The FAA's intent in paragraph (g)(2) of AD 2000–09–01 was that alternative methods of compliance (AMOC) approved previously to paragraph (a) of AD 93–20–02, are approved as AMOC's with only paragraph (b) of this AD, NOT paragraph (a). In addition, AMOC's approved previously to paragraph (b) of AD 93–20–02, are approved as AMOC's with only paragraph (a) of this AD, NOT paragraph (b). Therefore, this action revises paragraphs (g)(2) and (g)(3) of this AD to correct certain paragraph designations.

Correction of Publication

This document corrects and clarifies the errors and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains June 7, 2000.

Since this action only clarifies and corrects certain paragraph designations, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2000–09–01 R1 McDonnell Douglas: Amendment 39–11809. Docket 99–NM–338–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) SA1802SO or SA421NW; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage, accomplish the following:

Restatement of Requirements of AD 93–20–02

Actions Addressing the Main Deck Cargo Door

(a) Within 7 days after January 21, 1992 (the effective date of AD 92–02–05, amendment 39–8141), and thereafter at intervals not to exceed 100 hours time-in-service, perform the following inspections:

(1) Inspect the cargo door wire bundle between the exit point of the cargo liner and the attachment point on the cargo door to detect crimped, frayed, or chafed wires; and inspect for damaged, loose, or missing hardware mounting components. Prior to further flight, repair any damaged wiring or hardware mounting components in accordance with FAA-approved maintenance procedures.

(2) Inspect the cargo door latch rollers in the lower sill of the cargo door opening of the airplane to ensure that all twelve rollers can be freely rotated by hand. Prior to further flight, replace any discrepant roller components found, and repair any rollers that cannot be rotated freely by hand, in accordance with FAA-approved maintenance procedures.

(b) Within 7 days after November 17, 1993 (the effective date of AD 93–20–02, amendment 39–8709), revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) by replacing item 5 in the AFMS for SA1802SO, and item 6 in the AFMS for SA421NW, with the following. (This may be accomplished by inserting a copy of this AD into the AFMS.)

''Prior to initiating the cargo door closing sequence, a flight crew member must verify that the cargo door warning light is illuminated. After the door closing sequence is complete, and visual verification has been made that the latches are closed and the lockpins are properly engaged, a flight crew member must verify that the cargo door warning light is extinguished, and then conduct a PRESS-TO-TEST of the warning light to ensure that the light is operational. Pull the cargo door circuit breakers labeled 'pump' and 'valve' prior to takeoff. Methods for documentation of compliance with the preceding procedures must be approved by the FAA Principal Maintenance Inspector (PMI).''

New Requirements of This AD

Actions Addressing the Main Deck Cargo Door Powered Lock Systems

(c) Except as provided by paragraph (f) of this AD, within 30 days after the effective date of this AD, unless previously

accomplished within the last 18 months prior to the effective date of this AD, replace the circuit breakers of the main deck cargo door labeled ''pump'' and ''valve'' with new circuit breakers.

Actions Addressing the Main Deck Cargo Door Hydraulic Systems

(d) Within 18 months after the effective date of this AD, modify the mechanical and hydraulic systems of the main deck cargo door, in accordance with National Aircraft Service, Inc. (NASI) Service Bulletin SB–99–01, Revision A, dated October 15, 1999.

Actions Addressing the Main Deck Cargo Door Indication System

(e) Within 18 months after the effective date of this AD, modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is closed, latched, and locked; install a means to visually inspect the locking mechanism of the main deck cargo door; install a means to remove power to the door while the airplane is in flight; and install a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked; in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Installation of NASI Vent Door System STC ST01116CH, is an approved means of compliance with the requirements of paragraph (e) of this AD.

(f) Compliance with both paragraphs (d) and (e) of this AD constitutes terminating action for the requirements of both paragraphs (a) and (b) of this AD, and the AFMS revision required by paragraph (b) of this AD may be removed. Compliance with paragraph (e) of this AD within 30 days after the effective date of this AD eliminates the requirement to comply with paragraph (c) of this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance to paragraph (a) of AD 93–20–02, amendment 39–8709, approved previously in accordance with that AD, are approved as alternative methods of compliance with only paragraph (b) of this AD.

(3) Alternative methods of compliance to paragraph (b) of AD 93–20–02, amendment 39–8709, approved previously in accordance with that AD, are approved as alternative methods of compliance with only paragraph (a) of this AD.

Special Flight Permits

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

Incorporation by Reference

(i) The modification required by paragraph (d) of this AD shall be done in accordance with National Aircraft Service, Inc. (NASI) Service Bulletin SB–99–01, Revision A, dated October 15, 1999. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 7, 2000 (65 FR 25627, May 3, 2000). Copies may be obtained from National Aircraft Service, Inc. (NASI), 9133 Tecumseh-Clinton Road, Tecumseh, MI 49286. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) The effective date of this amendment remains June 7, 2000.

Appendix 1

Excerpt From an FAA Memorandum to Director—Airworthiness and Technical Standards of ATA, Dated March 20, 1992

(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.

Issued in Renton, Washington, on June 28, 2000.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16926 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–368–AD; Amendment 39–11808; AD 2000–13–09]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires repetitive detailed visual and dye penetrant inspections of the backup struts in the left and right nacelles to detect discrepancies; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the backup struts in the left and right nacelles due to fatigue cracking, which could result in loss of fail-safe

redundancy in the design of the nacelle in terms of load capability.

DATES: Effective August 11, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 11, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; 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 Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on May 10, 2000 (65 FR 30023). That action proposed to require repetitive detailed visual and dye penetrant inspections of the backup struts in the left and right nacelles to detect discrepancies; and corrective actions, if necessary.

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.

Explanation of Change Made to the Final Rule

Paragraphs (a), (b), and (c) of the final rule have been revised to reference Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000, as the appropriate source of service information. Revision 01 of the service bulletin was referenced in the proposed rule as the appropriate source of service information. A new NOTE 2 has also been added to give credit for accomplishment of the required actions in accordance with Revision 01 of the service bulletin prior to the effective date of this AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,440, or $480 per airplane, per inspection cycle.

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:

2000–13–09 Saab Aircraft AB: Amendment 39–11808. Docket 99–NM–368–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers –004 through –063 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the backup struts in the left and right nacelles due to fatigue cracking, which could result in loss of fail-safe redundancy in the design of the nacelle in terms of load capability, accomplish the following:

Repetitive Inspections

(a) For airplanes on which the dye penetrant inspection of the backup struts in the left and right nacelles specified in Saab Alert Service Bulletin 2000–A54–022, dated October 27, 1999, has not been accomplished prior to the effective date of this AD: Within 200 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000.

Note 2: Accomplishment of the required actions in accordance with Saab Service Bulletin 2000–54–023, Revision 01, dated January 28, 2000, prior to the effective date of this AD, is acceptable for compliance with this AD.

(b) For airplanes on which the dye penetrant inspection of the backup struts in the left and right nacelle specified in Saab Alert Service Bulletin 2000–A54–022, dated October 27, 1999, has been accomplished prior to the effective date of this AD: Within 450 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000.

(1) Perform a detailed visual inspection of the upper areas of the backup strut around the welding in the pipe and in the attachment fittings to detect any discrepancy (including fatigue cracking or a failed backup strut) by accomplishing all actions specified in paragraph B.(1) of the Accomplishment Instructions of the service bulletin, in accordance with the service bulletin. Repeat the detailed visual inspection thereafter at intervals not to exceed 450 flight hours.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids (e.g., mirror, magnifying lenses) may be used. Surface cleaning and elaborate access procedures may be required.''

(2) Perform a dye penetrant inspection, using Penetrant Type 1 (fluorescent dye) sensitivity level 2, of the lower areas of the backup strut around the welding in the pipe and in the attachment fittings to detect any discrepancy (including fatigue cracking or a failed backup strut) by accomplishing all actions specified in paragraphs B.(2) and B.(3) of the service bulletin, as applicable, in accordance with the service bulletin.

(i) For airplanes on which all backup struts have accumulated less than 4,500 total flight hours as of the effective date of this AD, repeat the dye penetrant inspection thereafter at intervals not to exceed 1,650 flight hours, until any backup strut on the airplane has accumulated 4,500 total flight hours; then perform the repetitive inspection thereafter at the interval specified by paragraph (b)(2)(ii) of this AD.

(ii) For airplanes on which any backup strut has accumulated 4,500 or more total flight hours as of the effective date of this AD, repeat the dye penetrant inspection thereafter at intervals not to exceed 900 flight hours.

Corrective Actions

(c) If any discrepancy (including fatigue cracking, a failed backup strut, or damage to the surrounding structure of the engine mount) is detected during any inspection required by this AD: Prior to further flight, accomplish the applicable corrective actions (including performing additional inspections of the engine mount surrounding structure, and replacing any discrepant backup strut in the hydraulic or electrical bay areas with a new backup strut) specified by paragraph C. of the Accomplishment Instructions of Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000, in accordance with the service bulletin. For any repair condition for which the service bulletin specifies to contact the manufacturer for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfartsverket (LFV) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000. 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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Swedish airworthiness directive No. 1–150R1, dated January 31, 2000.

(g) This amendment becomes effective on August 11, 2000.

Issued in Renton, Washington, on June 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16924 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–014; Order No. 587–L]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued June 30, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order establishing implementation date for imbalance trading.

SUMMARY: The Federal Energy Regulatory Commission is establishing November 1, 2000, as the date by which pipelines are required to comply with the regulation requiring pipelines to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances. (18 CFR 284.12(c)(2)(ii)). This regulation was adopted in Order No. 587-G. (63 FR 20072).

DATES: Pipelines must comply with 18 CFR 284.12(c)(2)(ii) by November 1, 2000.

ADDRESSES: Federal Energy Regulatory Commission 888 First Street, N.E. Washington DC, 20426

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. (202) 208–2294

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission 888 First Street, N.E., Washington, DC 20426. (202) 208–1283

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission 888 First Street, N.E., Washington, DC 20426. (202) 208–0507

SUPPLEMENTARY INFORMATION:

United States of America

Federal Energy Regulatory Commission

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr. Standards For Business Practices Of Interstate Natural Gas Pipelines.

[Docket No. RM96–1–014]

Order No. 587–L

Order Establishing Implementation Date for Imbalance Trading

Issued June 30, 2000.

In Order No. 587–G, [1] the Commission adopted a regulation, 18 CFR 284.12(c)(2)(ii), requiring pipelines to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances. Through trading of imbalances, shippers would be able to avoid penalties, without compromising the operational reliability of the pipeline's system. [2] In Order No. 587–G, the Commission deferred implementation of this regulation until the Gas Industry Standards Board (GISB) had an opportunity to develop standards related to imbalance trading.

The Commission further recognized the importance of imbalance trading in Order No. 637. [3] The Commission found that penalties can operate to distort the workings of the market and that imbalance trading plays an important role in the Commission's overall penalty policy because shippers can use imbalance trading to better manage their penalty exposure without jeopardizing the integrity of the pipeline's operations. The Commission further found that imbalance trading was of sufficient importance to shippers' ability to manage their business that pipelines would not be permitted to implement new imbalance services (such as park and loan services) before they implement imbalance trading. [4]

On February 23, 2000, GISB filed with the Commission a report on its standards development progress. GISB reports that its Executive Committee approved standards for imbalance trading and netting and title transfer tracking and that these standards are awaiting the development of the technical standards for information requirements and technical mapping. On February 11, 2000, the Executive Committee also established an Expedited Data Development Subcommittee whose first charge is to complete the technical standards for imbalance trading promptly. [5]

Because of the importance of imbalance trading to the overall Commission policy regarding pipeline penalties, the Commission is establishing November 1, 2000 as the date by which pipelines are to comply with the requirement to provide imbalance trading to their shippers. Since GISB has been working since February 2000 on developing the technical standards, this date should provide GISB and the pipelines with sufficient opportunity to complete the technical standards and implement imbalance trading. To implement imbalance trading on their systems, pipelines must file revised tariff sheets not less than 30 days nor more than 60 days prior to November 1, 2000. [6]

The Commission orders:

Each interstate pipeline must comply with § 284.12(c)(2)(ii) of the Commission regulations by November 1, 2000.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 00–17162 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998), *on reh'g*, Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 (Sep. 29, 1998).

[2] Order No. 587–G, 63 FR at 20081, III FERC Stats. & Regs. Regulations Preambles ¶ 31,062, at 30,677–80.

[3] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10156, 10198 (Feb. 25, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,308 (Feb. 9, 2000), Order No. 637–A, 65 FR 35705 (Jun. 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,099 (May 19, 2000).

[4] Order No. 637, 65 FR at 10199, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,311; Order No. 637–A, 65 FR at 35737, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,601–602.

[5] *See http://www.gisb.org/edd.htm* (June 8, 2000) (announcing formation of Expedited Data Development Subcommittee).

[6] 18 CFR 154.207.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–1456]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,6-hexanediamine, *N,N'*-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-1-butanamine and *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine as a stabilizer in olefin polymers intended for use in contact with food. This action responds to a petition filed by Ciba Specialty Chemicals Corp.

DATES: This rule is effective July 7, 2000. Submit written objections and requests for a hearing by August 7, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 27, 1999 (64 FR 28825), FDA announced that a food additive petition (FAP 9B4656) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 1,6-hexanediamine, *N,N'*-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-1-butanamine and *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine as a stabilizer in olefin polymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4656. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human

environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by August 7, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

(b) * * *

Substances	Limitations
* * * * * * *	
1,6-Hexanediamine, *N,N'*-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-1-butanamine and *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine (CAS Reg. No. 192268–64–7)	For use only: 1. At levels not to exceed 0.5 percent by weight of propylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 3.1a, 3.2a, 3.2b, 3.4, or 3.5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories I, II, IV–B, VI–A, VI–B, VII–B, and VIII, and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.3 percent by weight of propylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 3.1a, 3.2a, 3.2b, 3.4, or 3.5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 3. At levels not to exceed 0.5 percent by weight of ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, or 3.6 (where the density of each of these polymers is at least 0.94 gram per cubic centimeter), or 5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories I, II, IV–B, VI–A, VI–B, VII–B, and VIII, and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 4. At levels not to exceed 0.05 percent by weight of ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, or 3.6 (where the density of each of these polymers is at least 0.94 gram per cubic centimeter), or 5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 5. At levels not to exceed 0.5 percent by weight of ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, 3.4, 3.5, or 3.6 (where the density of each of these polymers is less than 0.94 gram per cubic centimeter), or 5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories I, II, IV–B, VI–A, VI–B, VII–B, and VIII, and under conditions of use C through G described in table 2 of § 176.170(c) of this chapter.

Substances	Limitations
	6. At levels not to exceed 0.01 percent by weight of ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, 3.4, 3.5, or 3.6 (where the density of each of these polymers is less than 0.94 gram per cubic centimeter), or 5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use C through G described in table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: June 15, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–17203 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Bacitracin Methylene Disalicylate, and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for using approved, single-ingredient salinomycin, bacitracin methylene disalicylate (BMD), and roxarsone Type A medicated articles to make three-way combination Type C medicated feeds used for prevention of coccidiosis, as an aid in the prevention and control of necrotic enteritis, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation in broiler, roaster, and replacement (breeder and layer) chickens.

DATES: This rule is effective July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–121 that provides for use of approved BIO-COX® (30 or 60 grams per pound (g/lb) of salinomycin activity), BMD® (10, 25, 30, 40, 50, 60, or 75 g/lb BMD), and 3-NITRO® (45.4, 90, 227, or 360 g/lb roxarsone) Type A medicated articles to make combination Type C medicated feeds for use in broiler, roaster, and replacement chickens. The combination Type C medicated feeds contain 40 to 60 grams per ton (g/ton) salinomycin, 50 or 100 to 200 g/ton BMD, and 22.7 to 45.4 g/ton roxarsone and are used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, as an aid in the prevention (at 50 g/ton BMD) or control (at 100 to 200 g/ton BMD) of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation. The NADA is approved as of December 23, 1999, and the regulation in § 558.550 (21 CFR 558.550) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, due to an error in structuring the regulations, the approval entry in § 558.550(a)(3) is removed. Also, § 558.500(d)(1)(xv) and (d)(1)(xvi) are amended under limitations to reflect the change due to the error.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.550 is amended by removing the phrase ''through (d)(3)(iii)'' from paragraph (a)(2), by removing paragraph (a)(3), by revising the last sentence of paragraphs (d)(1)(xv)(*c*) and (d)(1)(xvi)(*c*), by adding paragraphs (d)(1)(xviii) and (xix), by redesignating paragraphs (d)(3)(i), (d)(3)(ii), and (d)(3)(iii) as paragraphs (d)(3)(i)(A), (d)(3)(i)(B), and (d)(3)(i)(C), respectively, and by adding new paragraphs (d)(3)(ii) and (d)(3)(iii) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(d) * * *

(1) * * *

(xv) * * *

(*c*) *Limitations.* * * * Chlortetracycline as provided by Nos. 046573 and 063238; roxarsone as provided by No. 046573; and salinomycin as provided by Nos. 012799 and 063238 in § 510.600(c) of this chapter.

(xvi) * * *

(*c*) *Limitations.* * * * Chlortetracycline as provided by Nos. 046573 and 063238; salinomycin as provided by Nos. 012799 and 063238 in § 510.600(c) of this chapter.

* * * * *

(xviii)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; bacitracin methylene disalicylate, 50 grams; and roxarsone, 22.7 to 45.4 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(C) *Limitations.* Feed continuously as sole ration. Do not feed to laying chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. May be fatal if fed to adult turkeys or to horses. Withdraw 5 days before slaughter. Salinomycin as provided by Nos. 063238; bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.

(xix)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; bacitracin methylene disalicylate, 100 to 200 grams; and roxarsone, 22.7 to 45.4 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(C) *Limitations.* Feed continuously as sole ration. To control necrotic enteritis, start medication at first clinical signs of disease; vary dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Do not feed to laying chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. May be fatal if fed to adult turkeys or to horses. Withdraw 5 days before slaughter. Salinomycin as provided by No. 063238; bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

(3) * * *

(ii)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; bacitracin methylene disalicylate, 50 grams; and roxarsone, 22.7 to 45.4 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(C) *Limitations.* Feed continuously as sole ration. Discontinue use prior to sexual maturity. Do not feed to laying chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. May be fatal if fed to adult turkeys or to horses. Withdraw 5 days before slaughter. Salinomycin as provided by No. 063238; bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c).

(iii)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; bacitracin methylene disalicylate, 100 to 200 grams; and roxarsone, 22.7 to 45.4 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(C) *Limitations.* Feed continuously as sole ration. To control necrotic enteritis, start medication at first clinical signs of disease; vary dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Discontinue use prior to sexual maturity. Do not feed to laying chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. May be fatal if fed to adult turkeys or to horses. Withdraw 5 days before slaughter. Salinomycin as provided by No. 063238; bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c).

* * * * *

Dated: June 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–17196 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 111

Presentation of First-Class Mail and Standard Mail (A) Automation Letters and Cards for Verification Under New SAVE Verification Procedures and Revisions to Combined Mailing Standards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On December 9, 1999 (64 FR 68965), the Postal Service published a proposed rule amending the Domestic Mail Manual (DMM) to enable adoption of new mail verification procedures, now in the process of being implemented. The Postal Service also proposed one DMM change specific to combined mailings. This notice announces the adoption of these changes. They support the new Standardized Acceptance and Verification (SAVE) procedures for First-Class Mail and Standard Mail (A) automation letters and cards, and limit the weight of First-Class Mail with precanceled stamps in combined mailings. This notice also responds to several comments received.

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Scott Hamel, (703) 329–3660.

SUPPLEMENTARY INFORMATION: In summary, as of July 13, 2000, the following Domestic Mail Manual changes are being adopted to implement the new verification procedures for automation letter mailings and to revise the requirements for combined mailings:

(1) For First-Class Mail and Standard Mail (A) automation letter and card mailings, mixed AADC trays must be physically separated from other trays when the mail is presented to the USPS for verification.

(2) For all First-Class Mail and Standard Mail (A) automation letter and card mailings containing 10,000 or more pieces, documentation must be submitted on paper in a standardized format in accordance with DMM P012. Alternatively, if authorized by the Postal Service, the standardized documentation may be submitted in an easily accessible electronic format.

(3) For combined mailings, mailers may not include First-Class Mail pieces that weigh over 1 ounce and are paid with precanceled stamps.

Comments Received

The Postal Service received three comments in response to the December 9, 1999, Proposed Rule. One came from a professional mailer and two were from

mailer associations. None were received directly from Postal Service customers. The comments fell into two broad categories: those relating to the published policy proposals, and those relating to the actual procedures to be used by Postal Service mail acceptance personnel in the verification process. The procedures were not included in the published notice but instead have been made available to mailers and their associations upon request. In addition, the Manager, Northern Virginia Rates and Classification Service Center has contacted mailer associations directly to discuss them. The procedures were not published with the policy proposals because the procedures do not impact the way mailers prepare mail. They change only the way the Postal Service verifies mail. Nonetheless, mailers did participate in the development of SAVE from its inception. In fact, several of its salient features were introduced by mailers. SAVE continues to evolve as we gain experience and evaluate and apply mailer suggestions.

One of the primary purposes of SAVE is to create a comprehensive, exact description of the procedures for postal clerks to use to verify automation letter and card mailings. The Postal Service committed to make the procedures available to mailers as well. In this way, the process can be monitored for integrity by mailers themselves.

The current version of the SAVE procedures (for MLOCR and barcode sorter mailers) is available from the Postal Service's Web site at www.usps.com/mptqm/downloads.htm. Very minor modifications may be made for other automation letter and card mailers as the result of current field testing. Any resulting changes will appear on the same Web site in late July 2000. The following paragraphs address mailers' comments to the proposed DMM changes.

Segregation of Mixed AADC Trays

Two comments were concerned that the Postal Service planned to scrutinize trays that tend to be error prone and then draw unfair conclusions about a mailing as a whole. A third comment questioned the value of the proposal to the Postal Service, but felt strongly that we needed to be clear in what is intended by ''physically segregated.''

Regarding the fairness issue, the procedures address the comment by introducing a new ''weight factor'' when computing error percentages. This approach accomplishes the joint goals of encouraging mailers to improve the admitted lower quality of mixed AADC trays while not unduly penalizing other sort levels for these mixed level errors. Because mailers helped develop this weighting process, we are confident other mailers will agree to its fairness in operation. The Postal Service remains open to ideas for improving SAVE.

The value of this policy proposal is that SAVE requires the postal clerk to be able to locate all of the mixed AADC trays presented in a mailing so that verification can be performed. If these trays are spread throughout the mailing as presented, verification of the mail might be slowed due to the need to search to retrieve them. We do agree with the comment that our proposal, as initially worded, might cause confusion about what the mailer is required to do. Accordingly, we reworded the requirement to make it clearer. The language in DMM M810.1.8 was clarified and appears in this notice. For the purposes of reading that language, a ''mailing'' is defined as those automation rate pieces that are represented by a single postage statement.

Standardized Documentation for Mailings With 10,000 or More Pieces

One comment supports this change without reservation. Another believes the Postal Service is making it more difficult to present mail; that the old way of mailers segregating identical piece weight mail by rate category for weigh verifications should be continued.

As a general matter, the Postal Service intends to eliminate weigh verification as a means of verifying piece counts, whenever possible. This process is time consuming. Piece counts can be confirmed with documentation. Since all large mailings are computer driven, the needed documentation is available.

Standardization of documentation content and format will contribute to more consistent verification methods and results throughout the postal system. All mailers' computer files contain the necessary data already so that, in some cases, the mailer may simply need to reprogram the mail qualification report to meet DMM standardized formats. Accordingly, the Postal Service is adopting the requirement that mailers provide standardized documentation for automation letter mailings having 10,000 or more pieces.

Eliminating Precanceled Stamped Pieces

The only comment on this portion of the proposal questioned its inclusion. This proposal was included because the Postal Service is striving to simplify mailing processes. Allowing precanceled stamp pieces that weigh more than 1 ounce in combined mailings adds complexity and makes verification extremely difficult. To make SAVE consistent universally, we believe it is important to eliminate this option. The crucial considerations in making this decision were that (1) business mailers have both metered and permit imprint options for this mail, and (2) few mailers are impacted because use of other than 1 ounce precanceled stamps in combined mailings is extremely rare. The Postal Service plans to go forward with this change.

General Comment

In conclusion, one comment suggested a six-month delay in implementing SAVE, so that more mailers can be educated. As it is, this final notice comes a full seven months after the initial notice. In lieu of delaying implementation, the Postal Service will further evaluate and promote awareness of SAVE by:

(1) Addressing national mailer association conferences.

(2) Providing its district offices with PowerPoint presentations to be used at local Postal Customer Council (PCC) meetings.

(3) Offering presentations at the Nashville and Anaheim Postal Forums.

(4) Making the SAVE procedures available to the mailing community via the Postal Service Web site. (MLOCR/barcode sorter procedures are available now; modifications for other automation letter and card mailers will be available in July 2000.)

(5) Testing SAVE at several list mailer sites in June 2000.

This approach recognizes that the bulk of SAVE educational efforts will be borne by the Postal Service. The impact on mailers will be minimal. Mailers need only begin presenting mixed AADC trays together, and many already do this. Some mailers may need to reprogram mail qualification reports to conform to current DMM standardized formats, although all MLOCR/barcode sorter mailers and most list mailers already meet this standard because they use conforming software from equipment and software vendors.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C.553 (b),(c)) regarding proposed rulemaking by 39 U.S.C.410 (a), the Postal Service adopts the following revisions to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual as set forth below:

M Mail Preparation and Sortation

* * * * *

M800 All Automation Mail

M810 Letter-Size Mail

Mail 1.0 BASIC STANDARDS

* * * * *

1.3 Documentation

[Amend 1.3 to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing and must be supported by documentation produced by PAVE-certified (or, except for Periodicals, MAC-certified) software or by standardized documentation under P012. Exception: For mailings of fewer than 10,000 pieces, presort and rate documentation is not required if postage at the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance. Mailers may use a single postage statement and a single documentation report for all rate levels in a single mailing. Standard Mail (A) mailers may use a single postage statement and a single documentation report for both an automation carrier route mailing and a mailing containing pieces prepared at 5-digit, 3-digit, and basic automation rates as applicable, submitted for entry at the same time. Documentation of postage is not required if the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance. Combined mailings of Periodicals publications also must also be documented under M200. First-Class and Standard Mail (A) mailings prepared under the value added refund procedures or as combined mailings of different postage payment methods or different rates of postage affixed must meet additional standardized documentation requirements under P014 and P760.

* * * * *

[Add new 1.8 to read as follows:]

1.8 Presentation

Upon presentation of letter-size automation rate First-Class Mail and Standard Mail (A) mailings to the Postal Service for verification, mailers must present all mixed AADC trays together, and such trays must either be adjacent to one another or side by side, and must be placed as the top layer(s) on any given container. Containerization instructions for First-Class Mail letters and cards may be established by local Postal Service managers.

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P Postage and Payment Methods

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P700 Special Postage Payment Systems

* * * * *

P760 First-Class or Standard Mail (A) Mailings With Different Payment Methods

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2.0 POSTAGE

* * * * *

2.3 Precanceled Pieces—First-Class Mail

[Amend 2.3 by revising the first sentence to read as follows:]

Pieces with precanceled stamps in a combined mailing must not weigh more than 1 ounce and must bear postage in any denomination of precanceled stamps permitted in a Presorted or automation rate mailing. Additional postage due for precanceled stamp pieces in a combined mailing is deducted from the mailer's postage due advance deposit account. Full postage at single-piece First-Class Mail rates must be paid on accompanying single-piece rate mail using one of the methods under P100. Additional preparation to verify postage due may be required by the Postal Service.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–17094 Filed 7–6–00; 8:45 am]

BILLING CODE 7710–12–U

LEGAL SERVICES CORPORATION

45 CFR Part 1635

Timekeeping Requirement

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's rule on timekeeping to assure that allocations of expenditures of LSC funds are supported by accurate records. The final rule requires that recipient time records for attorneys and paralegals reflect the date as well as the amount of time spent on each case, matter or supporting activity. The final rule also requires that part-time attorneys and paralegals who also work for organizations that engage in restricted activities certify that they have not worked on such restricted activities (except for *de minimis* actions) during any time for which they are compensated with LSC funds nor used recipient resources for restricted activities. Finally, the final rule adds a definition for the term restricted activities.

EFFECTIVE DATE: This final rule is effective on August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, N.E., Washington, DC 20002–4250; 202–336–8817; mcondray@lsc.gov.

SUPPLEMENTARY INFORMATION: The publication of this final rule completes a process dating back to early 1998. In February of that year, the LSC's Office of Inspector General (OIG) issued a Summary Report on Audits of Selected Grantees for Compliance with Selected Regulations which found that timekeeping records could not demonstrate that recipients' part-time attorneys and paralegals do not work on restricted activities during any time for which they are compensated by the recipient for their services. The OIG recommended that the LSC revise its timekeeping rule to require that part-time attorneys and paralegals maintain timekeeping records for all hours worked for the recipient by date and time of day. The Operations and Regulations Committee (Committee) of the LSC Board of Directors (Board) met in September 1998, to consider the OIG recommendation and other proposed revisions to the existing timekeeping rule. Following that meeting, LSC published a Notice of Proposed Rulemaking (NPRM) for public comment on October 22, 1998 (63 FR 56594).

Under the existing rule, all recipients are required to keep contemporaneous records of the amount of time their attorneys and paralegals spend on each case, matter or supporting activity. The NPRM proposed three changes to this

basic requirement. First, LSC proposed that full-time attorneys and paralegals be required to record the date that time was spent on each case, matter or supporting activity, in addition to the amount of time spent. The second proposed change would have required that time records for part-time attorneys and paralegals who also work for organizations which engage in restricted activities (a term of art referring to those activities in which organizations receiving LSC funding may not engage due to statutory and regulatory limitations) provide the date and exact time of day for time spent on each case, matter or supporting activity. The third change proposed that time records for both full-time and part-time attorneys and paralegals be consistent with the recipient's time and attendance records used for payroll purposes.

In addition to the proposed changes to the text of § 1635.3(b)(1), LSC requested comment on whether LSC should, as an alternative to the date and time of day record requirement being proposed for part-time attorneys and paralegals, require such employees to certify in writing that they had not engaged in any restricted activities during any time for which they were paid by the recipient. The NPRM did not contain any proposed language relating to a certification requirement, but invited comment on the matter of certification or other alternatives to the recordkeeping requirement that might address the OIG's concerns.

Most of the comments LSC received on the NRPM preferred the certification option over the date and time of day record proposed on the basis that the requirement to keep records by time of day was too onerous given the typical workday patterns of legal services attorney and paralegals. Some commenters also objected to the proposal that all attorney and paralegal time records reflect the date as well as the amount of time spent as unnecessary and administratively burdensome. Many of the comments also objected to the proposal that time records be consistent with payroll records, fearing that the proposal would place recipients in jeopardy of being in non-compliance with the Fair Labor Standards Act.

The Committee met in February 1999, to consider the comments on the NPRM. After considering the comments received, along with the recommendations of the OIG and staff, the Committee decided to retain certain elements of the NPRM, revise others, and to republish the proposed rule for further public comment. The new proposed rule (''republished NPRM''), issued on April 5, 1999 (64 FR 16383), replaced the previous proposal that part-time attorneys and paralegals be required to record the exact date and time for time worked with a certification requirement. Under a new proposed § 1635.3(e), LSC proposed to require part-time attorneys and paralegals who also work for organizations that engage in restricted activities to certify on a quarterly basis that they had not worked on restricted activities during any time for which they were compensated with LSC funds nor used recipient resources for restricted activities. The proposed certification requirement contained an exception for *de minimis* activities, acknowledging that certain activities, such as opening or briefly screening mail or taking a phone call to schedule another time to discuss restricted activity matters, are often unavoidable. Related to this issue, the republished NPRM added a new § 1635.2 (c), containing a proposed definition of ''restricted activities.''

The republished NPRM retained the previously proposed requirement that all attorney and paralegal time records provide the date for each timekeeping entry. LSC was not convinced that this requirement would pose an undue administrative burden on recipients and that reference to a particular timeframe was necessary to an understanding of the records. The republished NPRM, however, did invite specific comment from those recipients whose current recordkeeping systems did not include recording by date on the anticipated effect of the proposal.

Finally, LSC deleted the previously proposed requirement that time keeping records be consistent with payroll records. Although LSC did not agree with the comments that the proposal would require recipients to run afoul of the Fair Labor Standards Act, LSC determined that the proposed recordkeeping consistency requirement was not necessary. The original proposal was intended to address a problem related to timekeeping records in a period during which many recipients were divesting themselves of matters which they were no longer permitted to handle as the result of legislative changes to the program in 1996. Since that time, however, the divestitures have been completed and LSC staff and OIG agreed that the risk of non-compliance with the new restrictions has decreased significantly, eliminating the need for consistency between payroll and timekeeping records. Thus, in light of the changed circumstances and the concerns raised by the comments, LSC decided simply to drop this proposal from the republished NPRM.

LSC received three comments on the republished NPRM. All of the comments generally favored the certification approach over the earlier proposal requiring part-time attorneys and paralegals to keep time by recording the exact time of day for each case, matter or supporting activity. The comments suggested making some specific changes to the language in several of the sections to improve what the commenters considered the clarity of the language rather than the substance of the proposed requirements. These comments are discussed at greater length in the Section-by-Section Analysis, below.

After a meeting in November 1999 to consider the comments and staff report on the republished NPRM, the Committee made a number of additional revisions to the rule and voted to recommend to the Board that the rule be adopted as revised. Subsequently, the Board adopted as final the Committee's revised and reported version of the rule, as set forth below.

Section-by-Section Analysis

Section 1635.1 Purpose

The final rule retains the provisions of the current rule. No comments were received on this section.

Section 1635.2 Definitions

The final rule adopts in § 1635.2(c), a modified definition of the term ''restricted activities'' to clarify the meaning of that term as used in the certification requirement (§ 1635.3(d)). Restricted activities are now defined as those activities that are prohibited in 45 CFR part 1610.

Restricted activities is a term of art which refers to activities which recipients are statutorily prohibited from engaging in by the LSC Act or Section 504 of the 1996 LSC appropriations act. The term is defined at length in the LSC's regulations relating to the use of non-LSC funds, transfer of LSC funds and program integrity at 45 CFR 1610.2 (a) and (b). See 62 FR 27695 (May 21, 1997). Because these definitions cite to the restrictions' statutory sources and each restriction's implementing regulation, if available, LSC proposed to define ''restricted activities'' as those activities inconsistent with section 504 in 45 CFR 1610.2 (a) and (b).

Several commenters requested that LSC clarify the definition. Upon further reflection, LSC determined that although the § 1610.2 definitions list the types of activities that are restricted by law, other portions of part 1610 provide additional useful information. For

example, part 1610 also contains information which explains the scope of the restrictions, especially in regard to the types of funds that may not be used for various activities. LSC, accordingly, is changing the definition of ''restricted activities'' in this final rule to refer to the use of that term in the entirety of part 1610. LSC believes that making reference to part 1610 for definition of the ''restricted activities'' will sufficiently inform recipients as to the intended meaning and scope of the term, as they should be well versed in the provisions of part 1610 whose violations have serious implications for their LSC funding. LSC also believes that the revised definition clarifies that nothing in the proposed rule is intended to expand the scope of any restriction or the type of recipient funds implicated by a particular statutory or regulatory restriction.

The final rule retains, with minor clarifying changes, the definition of matter in 1635.2(b). The term ''referral'' is added to the list of examples of indirect services to clarify that the process of interviewing an applicant, determining eligibility and making a referral to a PAI attorney or other agency is a matter.

The final rule retains the definitions of case in 1635.2(a) and supporting activity in 1635.2(d).

Section 1635.3 Timekeeping Requirement

Section 1635.3(b)(1) of the final rule adopts a requirement that all recipient attorneys and paralegals provide the date as well as the amount of time spent on each case, matter or supporting activity in their time-keeping records.

LSC believes that timekeeping records have little significance unless put into the context of a particular time frame. The previous rule already implied a connection between timekeeping records and a particular date because it required that timekeeping records be made contemporaneously. In practice, the timekeeping records of most LSC recipients already provide the date in their timekeeping records. Thus, LSC did not consider the proposal to add a date requirement to the regulation to be burdensome. Nonetheless, when the proposed rule was republished, LSC requested those recipients whose records did not provide the date to comment on how the requirement might affect their programs. No comments were received on this particular issue. Rather, one comment on the date requirement stated that it was not an unreasonable additional burden on recipients, in part because most current timekeeping systems used by LSC recipients already include the date in the information routinely collected. Accordingly, LSC has adopted the date requirement in the final rule.

The final rule contains a new paragraph (d) (corresponding to proposed paragraph (e) in the republished NPRM) requiring that any attorney or paralegal who works part-time for a recipient and part-time for an organization that engages in restricted activities to certify in writing that, with the exception of *de minimis* actions, he or she has not worked on restricted activities during the time he or she was being compensated by the recipient, nor used recipient resources for restricted activities. Paragraph (d) also sets forth a standard for determining if an action can be classified as *de minimis*: *de minimis* actions are those that are of little substance; require little time; are not initiated by the part-time attorney or paralegal; and, for the most part, are unavoidable.

Activities that would meet the standard include answering the telephone and establishing another non-LSC program time with the caller to discuss the restricted activity, or opening and briefly screening mail. Actions that would not meet this standard include researching, preparing legal documents, meeting with or providing advice to the client and conferring with third parties on behalf of the client. Although the examples listed above are not intended to provide an exhaustive list of permissible and impermissible actions, LSC cautions recipients that it intends to interpret the *de minimis* standard strictly to permit only a very narrow range of actions. LSC is taking this position in order to ensure that part-time attorneys and paralegals are not engaged in restricted activities while being compensated by the recipient or using recipient resources for restricted activities.

In the republished NPRM, the proposed regulatory text for this paragraph contained examples of *de minimis* actions. Two comments requested that LSC provide additional examples of permitted actions and clarify the meaning of the exception. Rather than cluttering up the regulatory text with additional examples, LSC believes that it is better to set forth a standard for *de minimis* actions in the regulatory text and include a discussion and examples of *de minimis* actions in the preamble. The final rule reflects this judgment.

The proposed regulatory text and the related preamble discussion had stated that the certification requirement did not apply to *de minimis* actions ''related to a restricted activity that does not involve working on the restricted activity.'' LSC received a comment noting that the references to ''working on the related activity'' constitute a tautology that reiterates the same concept without providing sufficient guidance on the scope of the exception. LSC agrees that the reference to ''working on restricted activities'' is vague and repetitive. Accordingly, that phrase has been deleted from the final rule.

LSC also received comments suggesting adding the term ''non-substantive'' after *de minimis*. LSC has determined that the term ''non-substantive'' should not be added to the regulation because it does not clarify the meaning of *de minimis*. The meaning of *de minimis* (trifling; small matter; of little importance) is sufficiently similar to that of the term ''non-substantive'' (small amount; having little practical importance) that including both terms would be repetitive and not helpful.

One comment suggested replacing ''works'' with ''is employed'' to clarify that the part-time attorney or paralegal has an employee/employer relationship with the recipient. For the purposes of this rule, either term has the same meaning. Accordingly, the final rule retains the term ''works'' as proposed, without change.

Another comment requested a clarification that the term ''time period'' refers to the specific hours or work days the part-time attorney or paralegal is expected to work for the recipient rather than payroll periods during which the employee may work part-time for both the recipient and another organization that engages in restricted activities. LSC has deleted the word ''period'' from the final rule so that the language makes clear that the time referred to is the specific time the attorney or paralegal works for the recipient and for which he or she is paid by the recipient.

The final rule requires that certifications be made quarterly on a form determined by LSC. The republished NPRM proposed that certifications be made to LSC on a quarterly basis on dates established by LSC. One comment questioned the need for quarterly certifications stating that such frequent reporting would put a significant administrative burden on the recipient. The comment also suggested that LSC not establish a specific date on which a certification needs to be made, but require certification on or before a particular date instead. One comment also noted that the LSC has not always provided recipients with the appropriate forms in a timely manner. LSC disagrees that the quarterly requirement would impose a significant

administrative burden on recipients, but agrees that it is unnecessary for LSC to set a date upon which the certification is due. The final rule reflects these determinations. In addition, the final rule requires LSC to provide recipients with an appropriate form by the effective date of the final rule.

LSC received one comment suggesting that LSC require recipients to submit the certifications to LSC. LSC does not believe such a requirement is necessary. The certification requirement is intended to be a recordkeeping rather than a reporting requirement. The information is to be maintained by recipients so that it is available to auditors or LSC staff for annual audits or on-site reviews. A recipient would need to submit certifications to LSC only when requested to do so by LSC. Accordingly, this suggestion has not been adopted in the final rule.

The final rule eliminates the old paragraph (c) because it is outdated. This paragraph required that the time keeping system must be implemented within 30 days of the effective date of the regulation or within 30 days of the effective date of a grant or contract, whichever is later. The preamble states that the final rule becomes effective 30 days after publication. LSC management routinely provides new grantees with deadlines for compliance with various grant requirements, such as governing board composition and reporting requirements. Thus, the continued inclusion of this requirement is not necessary. This change was not contained in either the original or republished NPRMs, but as it is a technical, procedural change that has no adverse effect on recipients subject to this rule it may be made without prior public notice and comment. 5 U.S.C. 553(b).

In the final rule, paragraph (d) is relettered as (c) and contains a minor conforming language change. The final rule deletes the phrase ''from the time of implementation.'' The timekeeping system must be capable of aggregating the time record information on both closed and pending cases by the legal problem type from the commencement of the case. The deleted phrase is confusing and unnecessary.

Section 1635.4 Administrative Provisions

The final rule retains the provisions of the current rule. No comments were received on this section.

For reasons set forth above, LSC revises 45 CFR part 1635 to read as follows:

Sec.
1635.1 Purpose.
1635.2 Definitions.
1635.3 Timekeeping requirement.
1635.4 Administrative provisions.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

§ 1635.1 Purpose.

This part is intended to improve accountability for the use of all funds of a recipient by:

(a) Assuring that allocations of expenditures of LSC funds pursuant to 45 CFR part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the ability of the recipient to determine the cost of specific functions; and

(c) Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) A *case* is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as but not limited to, community education presentations, operating *pro se* clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, referral, intake when no case is undertaken, and tracking substantive law developments.

(c) *Restricted activities* means those activities that recipients may not undertake as set out in 45 CFR part 1610.

(d) A *supporting activity* is any action that is not a case or matter, including management in general, and fund-raising.

§ 1635.3 Timekeeping requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient.

(2) Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type.

(d) Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities. The certification requirement does not apply to a *de minimis* action related to a restricted activity. Actions consistent with the *de minimis* standard are those that meet all or most of the following criteria: actions that are of little substance; require little time; are not initiated by the part-time employee; and, for the most part, are unavoidable. Certifications shall be made on a quarterly basis and shall be made on a form determined by LSC.

§ 1635.4 Administrative provisions.

Time records required by this section shall be available for examination by auditors and representatives of LSC, and by any other person or entity statutorily entitled to access to such records. LSC shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 00–17130 Filed 7–6–00; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 070300A]

Fisheries of the Exclusive Economic Zone Off Alaska; Open Access Sector Fishing Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the Steller sea lion conservation area (SCA) of the Bering Sea and Aleutian Islands management area (BSAI) by ''open access'' vessels (i.e., those vessels that are not fishing in cooperatives), which are catching pollock for processing by the inshore component. This action is necessary because the interim C season inside the SCA of allocation of pollock total allowable catch (TAC) specified for the ''open access'' vessels within the SCA will be reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 2000, until 1200 hrs, A.l.t., August 20, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI 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.

In accordance with § 679.20(a)(5)(i)(B)(2), § 679.20 (a)(5)(i)(D)(*3*), and the revised interim 2000 TAC amounts for pollock in the Bering Sea subarea (65 FR 3892, January 25, 2000; 65 FR 4520, January 28, 2000; and 65 FR 39107, June 23, 2000), the interim C season allocation of TAC specified to the ''open access'' vessels, not fishing in cooperatives, catching pollock for processing by the inshore component is 2,582 metric tons (mt).

In accordance with § 679.22(a)(11)(iv)(A) and (C)(*3*) the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim C season allocation of pollock TAC specified to the ''open access'' vessels for harvest within the SCA will be reached.

Consequently, NMFS is prohibiting directed fishing for pollock in the SCA by ''open access'' vessels catching pollock for processing by the inshore component, as defined at § 679.22(a)(11)(iv).

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the C season allocation of pollock TAC specified to the ''open access'' vessels, not fishing in cooperatives, of the inshore pollock component, for harvest within the SCA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would result in noncompliance with reasonable and prudent management measures implemented to promote the recovery of the endangered Steller sea lion. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

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

Dated: July 3, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–17231 Filed 7–3–00; 2:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 131
Friday, July 7, 2000

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. 2000–NE–03–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Spey 555–15, –15H, –15N, and –15P Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce (RR) plc Spey 555–15, –15H, –15N, and –15P turbofan engines. This proposal would require modification of the low pressure (LP) turbine stage 2 nozzle guide vane (NGV) support ring seal assembly. This proposal is prompted by two instances of disk drive arm damage. In both cases, heavy damage to the stage 1 LP turbine to stage 2 LP turbine disk drive arm occurred as a result of an out of balance condition following the failure of a stage 2 LP turbine blade. The actions specified by the proposed AD are intended to prevent damage to the disk drive arm which could result in loss of stage 1 LP turbine to stage 2 LP turbine disk drive, a turbine overspeed condition and possible uncontained disk failure and damage to the airplane.

DATES: Comments must be received by September 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–03–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''9-ane-adcomment@faa.gov.'' Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone No. 011–44–1332–242–424; FAX No. 011–44–1332–245–418. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone No. 781–238–7176; FAX No. 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–ANE–03–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–ANE–03–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (RR) Spey 555–15, –15H, –15N, and –15P turbofan engines. The CAA advises that there have been two occurrences of damage to the disk drive arm.

Manufacturer's Service Information

Rolls-Royce plc has issued Service Bulletin (SB) No. Sp 72–1063, dated May 1999, that specifies instructions for machining existing LP turbine stage 2 NGV support ring seal assemblies. The CAA classified this service bulletin as mandatory and issued AD 007–05–99 in order to ensure the airworthiness of these RR Spey 555–15 series turbofan engines in the U.K.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K., and is 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. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other RR Spey 555–15, –15H, –15N, and –15P turbofan engines of the same type design, the proposed AD would require reworking the existing LP turbine stage 2 NGV support ring seal assemblies within three years after the effective date of the proposed AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Economic Impact

There are approximately 310 engines of the affected design in the worldwide fleet. The FAA estimates that 60 engines installed on aircraft of U.S. registry would be affected by this proposed AD. It will take approximately 2.0 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Since this action is a rework of existing parts, there is no required parts cost. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators to be $7,200.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. 2000–NE–03–AD.

Applicability

This AD is applicable to Rolls-Royce plc Spey 555–15, –15H, –15N, and –15P turbofan engines. These engines are installed on but not limited to Fokker F.28 Mark series airplanes.

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

Compliance

Compliance with this AD is required as indicated below, unless it has already been completed.

To prevent damage to the disk drive arm which could result in loss of stage 1 LP turbine to stage 2 LP turbine disk drive, a turbine overspeed condition and possible uncontained disk failure and damage to the airplane, do the following:

Rework Instructions

(a) Within three years after the effective date of this AD, rework the LP turbine stage 2 NGV support ring seal assembly in accordance with paragraphs 2.A. through 2.C. of the Accomplishment Instructions of RR service bulletin (SB) No. Sp 72–1063.

Alternative Methods of Compliance

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

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

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 30, 2000.

David A. Downey,

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

[FR Doc. 00–17230 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–015]

Standards For Business Practices Of Interstate Natural Gas Pipelines

June 30, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend § 284.12 of its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines. The Commission is proposing to incorporate by reference the most recent version of the standards, Version 1.4, promulgated August 31, 1999 and November 15, 1999 by the Gas Industry Standards Board (GISB). The Commission also is proposing to adopt a regulation requiring pipelines to permit shippers to designate and rank the contracts under which gas will flow on a pipeline's system so that shippers have the flexibility to choose the transportation contract which is the most economical and efficacious to move their gas supplies. Version 1.4 of the GISB standards can be obtained from GISB at 1100 Louisiana, Suite 4925, Houston, TX 77002, 713–356–0060, *http://www.gisb.org.*

DATES: Comments are due August 7, 2000.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory

Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION:

United States of America

Federal Energy Regulatory Commission

Standards For Business Practices of Interstate Natural Gas Pipelines.
[Docket No. RM96–1–015]

Notice of Proposed Rulemaking

June 30, 2000.

The Federal Energy Regulatory Commission (Commission) is proposing to amend § 284.12 of its regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to incorporate by reference the most recent version of the consensus industry standards promulgated by the Gas Industry Standards Board (GISB), Version 1.4. The Commission also is proposing to require pipelines to permit shippers to designate and rank the contracts under which gas will flow on a pipeline's system so that shippers have the flexibility to choose the transportation contract which is the most economical and efficacious to move their gas supplies.

I. Background

In Order Nos. 587, 587–B, 587–C, 587–G, 587–H, 587–I, and 587–K the Commission adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid.[1] In those orders, the Commission incorporated by reference consensus standards developed by GISB, a private, consensus standards developer composed of members from all segments of the natural gas industry.

On February 23, 2000, GISB filed with the Commission a letter stating it had adopted a revised version of its business practice and communication standards, Version 1.4. The Version 1.4 standards include the standards for implementing pipeline interactive Internet web sites, which pipelines were required to implement by June 1, 2000, as well as standards for critical notices, and standards for multi-tiered allocations.

GISB also reports on certain issues on which the Commission had requested reports in Order No. 587–G. GISB reports that it has approved standards for multi-tiered allocations, which are included in Version 1.4 of the standards. It reports that its Executive Committee has approved standards for imbalance trading and netting and title transfer tracking, but that these standards are awaiting the development of the technical standards for information requirements and technical mapping. GISB further reports that the Executive Committee has been unable to reach consensus on standards for cross-contract ranking and that its confirmations and cross contract ranking subcommittee is considered inactive. In a letter dated June 15, 2000, GISB filed a follow-up report on cross contract ranking. GISB reports that its Executive Committee was unable to achieve consensus with respect to cross contract ranking due to disagreement on certain policy issues and that in the opinion of the Executive Committee no further progress can be made.

II. Discussion

A. Adoption of Version 1.4 of the Standards

The Commission is proposing to incorporate by reference into its regulations Version 1.4 of GISB's consensus standards with an implementation date on the first day of the month occurring 90 days after publication of the final rule in the **Federal Register**.[2] Pipelines already were required to implement the interactive Internet standards contained in Version 1.4 by June 1, 2000. The other changes included in Version 1.4 update and improve the standards, with the principal changes occurring in the areas of communication of critical notices and multi-tiered allocations. Commission adoption of these standards would keep the Commission regulations current.

GISB approved the standards under its consensus procedures.[3] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act (NTT&AA) of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like GISB, as means to carry out policy objectives or activities.[4]

B. Issues Remaining From Order No. 587–G

In Order No. 587–G, the Commission deferred the adoption of regulations in certain areas in which GISB had not yet reached consensus, including title transfer tracking, multi-tiered allocations, and cross-contract ranking, because the industry asked that GISB be given more time to consider the development of standards on these subjects. In these areas, the Commission provided policy guidance to help facilitate GISB's further consideration and requested a report by GISB on its progress in developing the necessary standards. The Commission further deferred implementation of its regulation requiring pipelines to permit imbalance trading until GISB developed the standards needed to implement the regulation.[5]

While GISB has adopted standards for multi-tiered allocations and is in the process of finalizing standards relating to title transfer tracking, and imbalance trading, GISB has been unable to reach consensus regarding standards for cross-contract ranking. GISB's ability to reach consensus regarding contentious issues such as multi-tiered allocations and title transfer tracking demonstrates that industry self-regulation can successfully bridge gaps between industry members in order to implement policies that improve the efficiency and competitiveness of the gas industry. On the other hand, GISB's inability to reach a consensus on cross-contract ranking demonstrates the continued need for Commission oversight of the standards process to help resolve policy issues

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), III FERC Stats. & Regs. Regulations Preambles ¶ 31,072 (Apr. 2, 1999).

[2] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.4 of the standards are available from GISB. 5 U.S.C. 552 (a)(1); 1 CFR 51.

[3] This process first requires a super-majority vote of 17 out of 25 members of GISB's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GISB's general membership must ratify the standards.

[4] Pub L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[5] 18 CFR 284.12(c)(2)(ii).

that impede the development of standards. The Commission will address below its proposal to require pipelines to permit shippers to designate and rank the contracts under which gas will flow on each pipeline's system and will also address the other areas left unresolved in Order No. 587–G.

1. Cross-Contract Ranking

Cross-contract ranking would enable shippers to allocate gas supplies across transportation contracts so that the shipper can choose the contract which provides for the most economical transportation. Shippers today are doing business using a variety of contracts, including their own firm and interruptible contracts, and capacity release contracts with different terms and conditions. The ability to allocate gas supplies among these contracts will enhance shipper flexibility and better enable them to manage their gas supply and capacity portfolios.

From the record submitted by GISB, it is not entirely clear what prevented consensus on this issue. A GISB subcommittee developed a set of rules for permitting cross-contract ranking (CXKR–1). (The proposed standards considered by GISB are reproduced in Appendix A). But when these standards were submitted to the Executive Committee, they did not receive consensus approval.[6] A revised standard (CXKR–2) received votes of 18 in favor and 5 opposed, but under GISB's rules the vote was insufficient because it failed to garner at least two votes from the pipeline segment.[7] The pipelines also submitted a proposal allowing for cross-contract ranking (CXKR–3), but the other industry segments did not vote for this set of standards. The minutes of the Executive Committee meeting do not contain a detailed explanation of the reasons for the opposition, although it appears some members were concerned the pipeline's proposal did not provide sufficient information to LDCs, while the pipelines took the position that the other proposals required them to bear too great an information burden.

Each of the proposed standards uses the same basic approach to achieving cross-contract ranking, by requiring entity to entity confirmation. The differences between the approaches are in the supplemental information pipelines would be required to provide and in the method of confirmation used for production. The two standards that appear at issue are standard 2 and standard 3 of proposal CXKR–2.

Standard 2 states:

> As part of the confirmation and scheduling process upon request, the TSP should make available, via EBB/EDM, supplemental information obtained during or derived from the nomination process. Such supplemental information, if available, should include the TSP's Service Requester Contract and, based upon the TSP's business practice may also, on a mutually agreeable basis, include (1) a derivable indicator characterizing the type of contract and service being provided, (2) Downstream Contract Identifier and/or (3) Service Requester's Package ID.

Standard 3 states:

> Absent mutual agreement to the contrary between the TSP and the Operator for confirmations at a production location, the TSP should support the fact that the operator will confirm with the TSP to only the upstream entity level. These upstream entities should either confirm or nominate (at the TSP's determination) at an entity level with the TSP.

Prior to the filing of the GISB report, Koch Gateway Pipeline Company (Koch) filed a letter on December 17, 1999, explaining its view that the impasse results from the supplemental information requirements in standard 2 of proposal CXKR–2 and the requirement in standard 3 of proposal CXKR–2 that pipelines confirm with working interest owners behind the wellhead. Koch contends that requiring pipelines to provide the supplemental information in standard 2 would improperly subject pipelines to regulation by states, rather than the Commission, and could subject the pipelines to potentially burdensome and inconsistent information requirements from different states. Koch contends that the standard regarding working interest owners may not be the best confirmation procedure for all pipelines. It maintains only a few pipelines now provide confirmation to working interest owners and that, given the number of working interest owners on its system, universal adoption of this standard could be counterproductive by making the confirmation more, rather than less, cumbersome. Koch, however, fully supports contract ranking standards and objects only to the embellishments regarding information requirements and confirmation with working interest owners.

The Commission is proposing to add § 284.12(c)(1)(iii) to its regulations requiring pipelines to permit shippers to designate and rank the transportation contracts under which gas will flow on each pipeline's system. From the record submitted by GISB, it appears a general consensus supports cross-contract ranking as a means by which shippers can better manage their contracts and gas supplies. The impasse is not over the method (entity to entity confirmation) used to achieve cross-contract ranking, but to the supplemental information requirements and confirmation with working interest owners. The Commission, therefore, is proposing to move forward with a regulation requiring pipelines to permit shippers to rank gas supplies across their contracts and to resolve disputes concerning the informational requirements and confirmation with working interest owners after receiving comments. The basic requirements for cross-contract ranking would appear to be encompassed by the standards contained in the pipeline proposal, CXKR–3.

The Commission solicits comments on whether there is a need for a uniform generic standard setting forth additional, limited information pipelines should provide to local distribution companies or shippers. The GISB record does not make clear why LDCs or others need additional information from the pipeline during the confirmation process, and the comments should focus on what specific information is needed and why it is necessary for the pipelines to provide it. Comments also should address whether the need for additional information applies to all pipelines or is limited only to certain pipelines that currently provide such additional information to LDCs.

The reason for the disagreement with respect to working interest owners also is not clear, and the Commission seeks comment that explains the nature of the issue and the differences in viewpoint. Comments should address the need for confirmations at the working interest level, the costs and benefits of adopting such a requirement for pipelines, shippers, and the overall efficiency of the pipeline grid, and whether a uniform requirement is necessary or whether pipelines should be permitted to choose the method of confirmation with producers that best fits their systems.

2. Title Transfer Tracking

GISB's Executive Committee has reached agreement on business standards for title transfer tracking and implementation of these standards await only the development of final technical standards. The Executive Committee, on

[6] Minutes of November 11, 1999, GISB Executive Committee Meeting, 5–8, 12 (Appendix to February 16, 2000 Transmittal Letter).

[7] All five pipeline members opposed the standard. Minutes of November 11, 1999, GISB Executive Committee Meeting, 12 (Appendix to February 16, 2000 Transmittal Letter) (Voting on CXKR–2). To pass the Executive Committee, GISB's rules specify that a standard must be approved by 17 out of 25 votes on the committee, with at least two from each industry segment.

February 11, 2000, established an Expedited Data Development Subcommittee with the charge to promptly finalize the technical standards needed to implement title transfer tracking.[8] The Executive Committee also reached agreement that pipelines would implement these standards within eight months following the adoption of the technical standards in the applicable GISB standards manual.[9] Given GISB's actions with respect to title transfer tracking, the Commission sees no further need to propose additional regulations and will expect pipelines to implement these standards based on the time frame established by GISB.

3. Implementation of Regulation Requiring Pipelines To Permit Imbalance Trading and Netting

In Order No. 587–G, the Commission adopted a regulation [10] requiring pipelines to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances, but deferred pipeline implementation of the regulation to enable GISB to develop the necessary business practice and technical standards relating to imbalance trading. GISB reports that its Executive Committee has approved the necessary business practice standards, and the first task for the Expedited Data Development Subcommittee is to develop the information requirements and technical mapping standards for imbalance trading. In a contemporaneous order, the Commission is requiring pipelines to implement imbalance trading and netting by November 1, 2000.

III. Notice of Proposed Use of Standards

Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a Notice of Proposed Rulemaking (NOPR) when the agency is seeking to issue or revise a regulation that contains a standard identifying whether a voluntary consensus standard or a government-unique standard is being proposed. In this NOPR, the Commission is proposing to use Version 1.4 (August 31, 1999) of the voluntary consensus standards developed by GISB.

IV. Information Collection Statement

The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs for implementing GISB's Version 1.4 standards which update and improve the existing Version 1.3 standards and for complying with the Commission's proposed regulation requiring pipelines to permit cross-contract ranking. The burden estimates are primarily related to start-up for implementing the latest version of the standards and the cross-contract ranking regulation and will not be on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–545	93	1	38	3,534
FERC–549C	93	1	1,810	168,330

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate) = 171,864.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$2,038	$97,066
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	2,038	97,066

[8] See *http:// www.gisb.org/ edd.htm* (June 8, 2000) (announcing formation of Expedited Data Development Subcommittee).

[9] GISB February 16, 2000 Transmittal Letter, at 4.

[10] 18 CFR 284.12(c)(2)(ii); Order No. 587–G, 63 FR at 20081, III FERC Stats. & Regs. Regulations Preambles ¶ 31,062, at 30,677–80.

OMB regulations [11] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collections.

OMB Control No.: 1902–0154, 1902–0174.

Respondents: Business or other for profit, (Interstate natural gas pipelines (Not applicable to small business.)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to the latest edition approved by GISB (Version 1.4) and require pipelines to permit cross-contract ranking. The implementation of these standards and the requirement to permit cross-contract ranking are necessary to increase the efficiency of the pipeline grid.

The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

Internal Review: The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202)273–0873 email: michael.miller@ferc.fed.us].

Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[12] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[13] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[14] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) [15] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The proposed regulations would impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., August 7, 2000. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 and should refer to Docket No. RM96–1–015.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM96–1–015; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to ''comment.rm@ferc.fed.us'' in the following format. On the subject line, specify Docket No. RM96–1–015. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

[11] 5 CFR 1320.11.

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

[13] 18 CFR 380.4.

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

[15] 5 U.S.C. 601–612.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE, Washington DC 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to *rimsmaster@ferc.fed.us.*

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C 7101–7532; 43 U.S.C 1331–1356.

2. In § 284.12, paragraphs (b)(1)(i) through (v) are revised and paragraph (c)(1)(iii) is added to read as follows:

§ 284.12 Standards for Pipeline Business Operations and Communications.

* * * * *

(b) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.4, August 31, 1999);

(ii) Flowing Gas Related Standards (Version 1.4, August 31, 1999) with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.4, August 31, 1999);

(iv) Electronic Delivery Mechanism Standards (Version 1.4, November 15, 1999) with the exception of Standard 4.3.4; and

(v) Capacity Release Related Standards (Version 1.4, August 31, 1999).

* * * * *

(c) * * *

(1) * * *

(iii) A pipeline must permit shippers to designate and rank the transportation contracts under which gas will flow on the pipeline's system.

* * * * *

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

Appendix

Cross-Contract Ranking Standards GISB Considered, But Did Not Adopt

Standards considered at the November 11, 1999 GISB Executive Committee Meeting.

CXKR–1

S1 Proposed Standard 1

Absent mutual agreement to the contrary, the standard level of confirmation should be entity to entity.

S2 Revised Proposed Standard 2

As part of the confirmation and scheduling process between a Transportation Service Provider (TSP) and a Local Distribution Company (LDC), upon request by the LDC, the TSP should make available, via EBB/EDM, supplemental information obtained during or derived from the nomination process necessary for the LDC to meet its statutory and/or regulatory obligations. Such supplemental information, if available, should include the TSP's Service Requester Contract and, based upon the TSP's business practice may also, on a mutually agreeable basis, include (1) a derivable indicator characterizing the type of contract and service being provided, (2) Downstream Contract Identifier and/or (3) Service Requester's Package ID.

S3 Proposed Standard 3

Absent mutual agreement to the contrary between the TSP and the Operator for confirmations at a production location, the TSP should support the fact that the operator will confirm with the TSP to only the upstream entity level. These upstream entities should either confirm or nominate (at the TSP's determination) at an entity level with the TSP.

D1 Proposed Definition 1

Production locations includes wellheads, platforms, plant tailgates (excluding straddle plants) and physical wellhead aggregation points.

S4 Proposed Standard 4

When nominated quantities exceed available capacity, the Transportation Service Provider (TSP) should first utilize its tariff requirements to assign capacity to each service level for each Service Requester (SR). The TSP should then use the SR's provided scheduling ranks to determine how the available quantities should be distributed within a single service level. The SR's provided scheduling ranks (as applicable) should be used as follows:

For reductions identified at or upstream of the constraint location, the order for application of ranks is Receipt Rank (Priority), Upstream Rank (Priority), Delivery Rank (Priority), Downstream Rank (Priority).

For reductions identified at or downstream of the constraint location, the order for application of ranks is Delivery Rank (Priority), Downstream Rank (Priority), Receipt Rank (Priority), Upstream Rank (Priority).

S5 Proposed Standard 5

When applying a confirmation reduction to an entity at a location, the Transportation

Service Provider (TSP) should use the Service Requester's (SR's) scheduling ranks provided on all nominations for that location and entity to determine the appropriate nomination(s) to be reduced, except where superseded by the TSP's tariff, general terms and conditions, or contractual obligations. The SR's provided scheduling ranks (as applicable) should be used as follows:

For receipt side reductions, the order for application of ranks is Upstream Rank (Priority), Receipt Rank (Priority), Delivery Rank (Priority), and Downstream Rank (Priority).

For delivery side reductions, the order for application of ranks is Downstream Rank (Priority), Delivery Rank (Priority), Receipt Rank (Priority), and Upstream Rank (Priority).

P1 Proposed Principle 1

In order to effectuate cross contract ranking, the level of confirmation at a location should occur at the entity to entity level.

S6 Revised Proposed Standard 6

Transportation Service Providers should utilize Standard 1.3.7 for ranks submitted in a nomination.

CXKR–2

Retain all standards in CXKR–1 with the exception of Standard S2 which would be revised to read as follows:

S2 Amended Revised Proposed Standard 2

As part of the confirmation and scheduling process upon request, the TSP should make available, via EBB/EDM, supplemental information obtained during or derived from the nomination process. Such supplemental information, if available, should include the TSP's Service Requester Contract and, based upon the TSP's business practice may also, on a mutually agreeable basis, include (1) a derivable indicator characterizing the type of contract and service being provided, (2) Downstream Contract Identifier and/or (3) Service Requester's Package ID.

CXKR–3

P1 New Principle

In order to effectuate cross contract ranking, the level of confirmation at a location should occur at the entity-to-entity level.

S1 New Standard

The standard level of confirmation should be entity to entity.

S4 New Standard

When nominated quantities exceed available capacity on a Transportation Service Provider's (TSP's) system, such TSP should first utilize its tariff requirements to assign capacity to each service level for each Service Requester (SR). The TSP should then use the SR's provided scheduling ranks as provided in the SR's nomination to determine how the available quantities should be distributed within a single service level.

The SR's provided scheduling ranks (as applicable) should be used as follows:

For reductions identified at or upstream of the constraint location, the order for application of ranks is Receipt Rank (Priority), Upstream Rank (Priority), Delivery Rank (Priority), Downstream Rank (Priority).

For reductions identified at or downstream of the constraint location, the order for application of ranks is Delivery Rank (Priority), Downstream Rank (Priority), Receipt Rank (Priority), Upstream Rank (Priority).

S5 New Standard

When applying a confirmation reduction to an entity (Service Requester (SR)) at a location, the Transportation Service Provider (TSP) should use such SR's scheduling ranks as provided on that SR's nominations at that location to determine the appropriate nominations(s) to be reduced, except where superceded by the TSP's tariff, general terms and conditions, or contractual obligations.

The SR's provided scheduling ranks (as applicable) should be used as follows:

For receipt side reductions, the order for application of ranks is Upstream Rank (Priority), Receipt Rank (Priority), Delivery Rank (Priority), Downstream Rank (Priority).

For delivery side reductions, the order for application of ranks is Downstream Rank (Priority), Delivery Rank (Priority), Receipt Rank (Priority), Upstream Rank (Priority).

[FR Doc. 00–17163 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 Parts 450 and 1410

Federal Transit Administration

23 CFR Part 1410

49 CFR Parts 613 and 621

[FHWA Docket No. FHWA–99–5933]

FHWA RIN 2125–AE62; FTA RIN 2132–AA66

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document extends this rulemaking's comment period until September 23, 2000. This is in response to numerous letters received by the FHWA and the FTA from State Departments of Transportation, transit operators, and metropolitan planning organizations requesting an extension of the comment period from the closing date. These groups based their requests on the time required to access the impact of these rules on the nation's highway and transit systems and provide meaningful comments.

EFFECTIVE DATE: Comments to the NPRM should be received no later than September 23, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Sheldon Edner, Metropolitan Planning and Policies Team (HEPM), (202) 366–4066 (metropolitan planning), Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366–4086 (statewide planning), or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Charles Goodman, Metropolitan Planning Division (TPL–12) (metropolitan planning), (202) 366–1944, Mr. Paul Verchninsk, Statewide Planning Division (TPL–11) (statewide planning), (202) 366–6385, or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, D.C. 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m. e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On May 25, 2000 (65 FR 33922), the FHWA and the FTA published an NPRM proposing to revise their regulations governing the developing of transportation plans and programs for urbanized (metropolitan) areas and statewide transportation plans and programs. These revisions are a product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) enacted on June 9, 1998, and generally would revise existing regulatory language to make it consistent with current statutory requirements.

The FHWA and the FTA have received requests from the American Association of State Highway and Transportation Officials, the American Public Transportation Association, the Association of Metropolitan Planning Organizations, and several State Departments of Transportation to extend the comment period. These groups voiced concerns that the proposed rule

was extremely complex and that 90 days was insufficient time to assess the impact of the proposed rules and provide meaningful comments. We agree that more time for an in-depth analysis of the NPRM would be beneficial to the FHWA and the FTA in this rulemaking. For these reasons, the FHWA and the FTA find good cause to extend this NPRM comment period closing date by 30 days.

Authority: 23 U.S.C. 134, 135 and 315; 42 U.S.C. 7410 *et seq.;* 49 U.S.C. 5303–5309; 49 CFR 1.48 and 1.51.

Issued on: June 30, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

Nuria I. Fernandez,

Federal Transit Deputy Acting Administrator.

[FR Doc. 00–17158 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 Parts 771, 1420, and 1430

Federal Transit Administration

23 CFR Parts 1420 and 1430

49 CFR Parts 622 and 623

[FHWA Docket No. FHWA–99–5989]

FHWA RIN 2125–AE64; FTA RIN 2132–AA43

NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document extends this rulemaking's comment period until September 23, 2000. This is in response to numerous letters received by the FHWA and the FTA from State Departments of Transportation, transit operators, and metropolitan planning organizations requesting an extension of the comment period from the closing date. These groups based their requests on the time required to assess the impact of these rules on the nation's highway and transit systems and provide meaningful comments.

DATES: Comments to the NPRM should be received no later than September 23, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To receive notification of receipt of comments you must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Fed Skaer, (202) 366–2058, Office of Planning and Environment, HEPE, or Mr. L. Harold Aikens, (202) 366–0791, Office of the Chief Counsel, HCC–31. For the FTA: Mr. Joseph Ossi, (202) 366–0096, Office of Planning, TPL–22, or Mr. Scott Biehl (202) 366–0952, Office of the Chief Counsel, TCC–30. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On May 25, 2000 (65 FR 33960), the FHWA and the FTA published an NPRM proposing to update and revise their National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) implementing regulation for projects funded or approved by the FHWA and the FTA. The current regulation was issued in 1987 and experience since that time, as well as changes in the legislation, most recently by the Transportation Equity act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107), call for an updated approach to the implementation of NEPA for FHWA and FTA projects and actions. Under this proposed rulemaking, the FHWA/FTA regulation for implementing NEPA would be revised to further emphasize using the NEPA process to facilitate effective and timely decisionmaking.

The FHWA and FTA have received requests from the American Association of State Highway and Transportation Officials, the American Public Transportation Association, the Association of Metropolitan Planning Organizations, and several State Departments of Transportation to extend the comment period. These groups voiced concerns that the proposed rule was extremely complex and that 90 days was insufficient time to assess the impact of the proposed rules and provide meaningful comments. We agree that more time for an in-depth analysis of the NPRM would be beneficial to the FHWA and the FTA in this rulemaking. For these reasons, the FHWA and the FTA find good cause to extend this NPRM comment period closing date by 30 days.

Authority: 23 U.S.C. 134, 135 and 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5309; 49 CFR 1.48 and 1.51.

Issued on: June 30, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

Nuria I. Fernandez,

Federal Transit Deputy Acting Administrator.

[FR Doc. 00–17159 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC65

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Decommissioning Activities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend MMS regulations governing oil and gas operations in the Outer Continental Shelf (OCS) to update decommissioning requirements. The new layout of the rule follows the logical sequence of plugging a well, decommissioning the platform and pipeline, and clearing the lease site. The proposed rule also updates requirements to reflect changes in technology. We restructured the requirements to make the regulations easier to read and understand. The proposed technical changes will help ensure that lessees decommission facilities safely and effectively.

DATES: MMS will consider all comments received by October 5, 2000. We will begin reviewing comments at that time and may not fully consider comments we receive after October 5, 2000.

ADDRESSES: If you wish to comment, you may mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (RPT). The RPT's e-mail address is: *rules.comments@mms.gov.*

Mail or hand-carry comments with respect to the information collection burden of the proposed rule to the Office of Information and Regulatory

Affairs; Office of Management and Budget; Attention: Desk Officer for the Department of the Interior (OMB control number 1010-New); 725 17th Street, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Research Branch, at (703) 787–1147.

SUPPLEMENTARY INFORMATION: In recent years, decommissioning practices have received more attention, which has resulted in changes in technology and practices. In 1996, at the request of MMS, the Marine Board of the National Research Council (NRC) published a report titled ''An Assessment of Techniques for Removing Offshore Structures.'' On April 15–17, 1996, MMS convened an International Decommissioning Workshop in New Orleans, Louisiana, to discuss the recommendations in the NRC report and current decommissioning industry practices. The workshop drew over 475 attendees to discuss and make recommendations on OCS decommissioning operations. On August 8, 1996, MMS published a notice in the **Federal Register** (61 FR 41422) that requested comments on its plans to follow up on recommendations received at the workshop.

We also sponsored several other public workshops, including one in Ventura, California, on September 23–25, 1997. The purpose of the workshops was to continue the process of discussing decommissioning activities and to receive recommendations.

The regulations in this proposed rule were updated to incorporate the following into one subpart:

- Comments from decommissioning workshops;
- Comments from the NRC report;
- Comments from the annual regulatory reviews;
- Applicable Notices to Lessees (NTL);
- Lease document requirements pertaining to removals; and
- The MMS artificial reef policy.

We also support the recommendation from the NRC to require that lessees only install platforms that can be removed. We will be proposing this requirement in a future update of the platform installation requirements.

Research efforts are under way to determine out-of-service pipeline flushing requirements. We will incorporate the results of this research into future updates of pipeline flushing requirements. We also are working on research efforts to improve facility removal technology.

Format of the Proposed Rule

We have written this proposed rule in a plain-language format with frequently asked questions and short answers. We have tried to set out these requirements in a straightforward and uncomplicated manner. The plain-language format uses the terms ''you'' or ''I,'' which refers to the lessee, the owners of operating rights, and pipeline right-of-way owners. We encourage your comments on our use of the plain-language format in this proposed rule, as well as future rulemaking. We also encourage your comments on including all of the decommissioning requirements from 30 CFR part 250, subparts G, I, and J into new subpart Q (at the end of the current 30 CFR part 250 regulations). We received comments at decommissioning workshops that it was difficult to find our decommissioning requirements because they were listed in three subparts.

New Requirements

Although the focus of this proposed rule is on the plain-language rewrite, and the reorganizing of subpart G into new subpart Q, the rule does propose some new requirements. The following paragraphs identify and briefly discuss these proposed revisions. We welcome your comments on these proposed requirements.

Section 250.1700 What Do the Terms ''Decommissioning'' and ''Obstructions'' Mean?

Since we are using the new industry term of ''decommissioning,'' we have defined it. Also, we defined ''obstructions'' so that we would not need to repeat the list of items that should be removed unless MMS waives the removal requirement case-by-case.

Section 250.1704 When Must I Submit Decommissioning Applications?

We included a new requirement that in the Pacific OCS Region and Alaska OCS Region, a lessee must submit an initial decommissioning application at least 2 years before production ceases with the general information listed in § 250.1705. We are responding to an industry trend to plan decommissioning earlier. We encourage this practice because industry representatives have mentioned that it is the key to a ''safe, conscious, and efficient decommissioning project.'' Also, MMS will need the information so we can be involved with the review on the ground floor planning of the world-class platform removals anticipated to occur on the OCS. We only anticipate a few applications a year for these areas.

Section 250.1710 How Must I Permanently Plug Wells?

We put the requirements in tabular format and added more plugging options to update technology.

Section 250.1711 What Are the Requirements If I Temporarily Plug a Well That I Plan To Re-enter?

To ensure that temporarily abandoned wells are protected and to ensure that those wells do not become an obstruction, we included a requirement that subsea domes must be trawled over after they are installed.

Section 250.1713 When Might MMS Consider Approving an Alternate Removal Depth?

We listed the conditions under which MMS might waive the requirement to clear a well site to 15 feet below the mud line because we have received many questions and comments concerning this topic at decommissioning workshops. However, MMS still conducts a case-by-case analysis of each request. We also added the possibility of allowing an alternate removal depth (above the mud line) for wells in more than 800 meters of water.

Section 250.1714 What Must I Do To Clear a Well Site of Obstructions?

We added the guidance listed in the Gulf of Mexico (GOM) OCS Region NTL 98–26 for site clearance, which was effective on November 30, 1998, into this section.

We also removed the site clearance verification method that uses a diver search around the wellbore because it was infrequently used and not as successful as other methods.

Section 250.718 What Are the Requirements for Removing Platforms and Subsea Facilities?

To be consistent with lease stipulations, we clarified that within 1 year after a lease terminates, a lessee must remove all platforms and subsea facilities according to the approved final decommissioning application. However, a lessee may receive approval to maintain the facilities to conduct operations or a waiver to conserve the structure as an artificial reef.

We also clarified that a lessee must remove subsea facilities in addition to removing the platform, since many additional facilities are used for field development.

Section 250.1719 What Information Must I Include in My Final Platform Removal Application?

We included the guidance from the GOM OCS Region NTL 99–G21, dated

September 13, 1999, to specify what information MMS needs in a platform removal application.

Section 250.1721 When Might MMS Consider Approving an Alternate Removal Depth?

We listed the conditions under which MMS might waive the requirement to clear a platform site to 15 feet below the mud line because we have received questions concerning this topic at decommissioning workshops. However, MMS still conducts a case-by-case analysis of each request.

Section 250.1722 What Is MMS' Policy on Converting a Platform or Other Facility to an Artificial Reef or Other Use?

Because we have received questions concerning MMS' policy on artificial reefs, and in response to a recommendation from the NRC, we propose to codify our policy on converting a platform to an artificial reef.

Section 250.1723 When Might MMS Approve Partial Structural Removals for Conversion to an Artificial Reef or Other Use?

We clarified the criteria that MMS uses to evaluate partial structure removals because we have received questions on the subject. We also added a requirement that the lessee must provide an unobstructed water column to respond to recommendations from the NRC.

Section 250.1726 What Are the Requirements for Removing a Pipeline?

We clarified the requirements concerning information to include in the pipeline decommissioning plan.

Derivation Table

The derivation table below shows where the proposed requirements originate from in the current regulations. The table also provides the section numbers that were used from 1988 up to mid-1998, when MMS assigned new section numbers to assist us in making regulatory updates (see 63 FR 29478, May 29, 1998).

Proposed new section	Current section	Previous number
250.1700	New definitions	New definitions.
250.1701	250.700(b)(2)	250.110(b)(2).
250.1702	250.700(b)(1)	250.110(b)(1).
250.1703	250.700(a); 250.913(a)	250.110(a); 250.143(a).
250.1704	250.701; 250.901(a); 250.1000(b)	250.111; 250.131(a); 250.150(b).
250.1705	New requirement	New requirement.
250.1706	250.700(a)	250.110(a).
250.1707	250.700(a)	250.110(a).
250.1708	250.700(a)	250.110(a).
250.1709	250.701	250.111.
250.1710	250.702	250.112.
250.1711	250.703	250.113.
250.1712	250.702(i)	250.112(i).
250.1713	250.702(i)	250.112(i).
250.1714–1717	250.704; 250.913(c)	250.114; 250.143(c).
250.1718	250.913(a)	250.143(a).
250.1719	250.913(a)	250.143(a).
250.1720	250.913(b)	250.143(b).
250.1721	250.913(b)	250.143(b).
250.1722	New policy statement	New policy statement.
250.1723	New policy statement	New policy statement.
250.1724	250.1006(a)(1)	250.156(a)(1).
250.1725	250.1006(a)(1); 250.1007(c)	250.156(a)(1); 250.157(c).
250.1726	250.1006(a)(2); 250.1007(c)	250.156(a)(2); 250.157(c).

Procedural Matters

Public Comment Procedure: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The proposed rule revises existing operation regulations. It does not prevent any lessee, operator, or drilling contractor from performing operations on the OCS, provided they follow the regulations. This rule updates decommissioning requirements and will not impose costs on States or localities.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the OMB under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The new or expanded requirements are written in plain language and designed to ensure that lessees decommission facilities to protect the environment and minimize obstructions to other uses of the OCS. The economic effects of this rule will be minimal. Lessees planning decommissioning activities in the

Pacific OCS Region and Alaska OCS Region would be required to plan these activities at least 2 years before production ceases and submit an initial decommissioning application. This will impact an estimated two lessees a year, as shown in Table 1. The yearly cost to submit an initial decommissioning plan is estimated at $1,000 per plan.

TABLE 1.—NEW REPORTING COST FOR THE INITIAL DECOMMISSIONING PLAN SUBMITTED IN THE PACIFIC AND ALASKA OCS REGIONS

	Yearly cost @ $1,000 per report	Yearly lessees affected	Yearly plans submitted
Small Businesses	$1,000	1	1
Other Lessees	1,000	1	1
Totals	2,000	2	2

Also, lessees who use domes to protect temporarily abandoned wells would be required to trawl over those domes after they install them. We estimate the cost for trawling would be $3,000 for each of the 45 existing domes and $3,000 to trawl each of the 10 additional domes installed each year. We estimate that 30 lessees will be required to trawl the 45 existing domes, and 5 lessees will trawl the additional 10 domes each subsequent year as shown in Table 2 (located in the Regulatory Flexibility Act section). The total costs are shown in Table 3 (located in the Regulatory Flexibility Act section).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The new or expanded requirements are minimal and apply only to the OCS decommissioning activities.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The new requirements and costs are minimal, and the main purpose of the rule is to write it in plain language.

(4) This rule does not raise novel legal or policy issues. The new requirements are based on the legal authority of the OCS Lands Act and other laws.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interfere with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the Supplementary Information section of this preamble helpful in understanding the rule? What else can we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, N.W., Washington, D.C. 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule was mainly updated to include plain language and to give additional guidance. It contains very few new requirements, and it will not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Takings Implication Assessment

According to Executive Order 12630, the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The new requirements are minor and deal with minimizing obstructions to other uses of the OCS. Thus, a Takings Implication Assessment need not be prepared according to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Regulatory Flexibility (RF) Act

The Department certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The changes proposed in 30 CFR 250, subpart Q, will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under the Standard Industrial Classification (SIC), 1381, Drilling Oil and Gas Wells, MMS estimates that there is a total of 1,380 firms that drill oil and gas wells onshore and offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. According to SBA estimates, 39 companies qualify as large firms, leaving 91 companies qualified as small firms with fewer than 500 employees.

Where there are some additional new or expanded reporting requirements in this rule, they do not impose extensive burdens. The cost to comply with the new requirements is a one-time cost of

approximately $3,000 paid to a trawling organization to trawl over domes of temporarily abandoned wells in shallow water. The OCS has approximately 45 of these domes. In subsequent years, we predict that 10 new domes will be trawled over.

We estimate that 20 of the 30 lessees that will trawl over the 45 existing domes are small businesses and 3 out of the 5 lessees that will trawl over domes in subsequent years will be small businesses. The cost to the small businesses will be $60,000 the first year and $6,000 each subsequent year, as shown in Table 2. However, the fishing industry, another small business, will benefit by having less loss to their fishing equipment.

TABLE 2.—NEW REQUIREMENT COST FOR TRAWLING

	First Year			Subsequent Years		
	Total cost @ $3000 per trawl	Lessees affected	Domes trawled	Total cost @ $3000 per trawl	Lessees affected	Domes trawled
Small Businesses	$60,000	20	20	$9,000	3	3
Other Lessees	75,000	10	25	6,000	2	2
Totals	135,000	30	45	15,000	5	5

TABLE 3.—TOTAL COSTS FOR BOTH THE NEW PLAN AND NEW TRAWLING REQUIREMENT

	First year			Subsequent Years		
	Total cost	Lessees affected	Domes trawled + plans submitted	Total cost	Lessees affected	Domes trawled + plans submitted
Small Businesses	$61,000	21	21	$10,000	4	4
Other Lessees	76,000	11	26	7,000	3	3
Totals	137,000	32	47	17,000	7	7

Also, about 2 lessees per year in the Pacific OCS Region or Alaska OCS Region will need to submit an initial decommissioning plan for a cost of approximately $1,000 each as shown in Table 1 in the Regulatory Planning and Review section.

We estimate that one of these lessees will be a small business. These plans are necessary to ensure that early planning is occurring for these upcoming world-class decommissioning activities.

Based on these calculations, this rule has no significant economic impact on small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small businesses. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The main purpose of this rule is to reorganize the requirements and write them in plain language. The new requirements are minimal and will only affect a few lessees.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The cost to comply with the new requirements is minor and will minimize conflicts with other uses of the OCS.

(c) Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises. The regulation contains a few new requirements that are not burdensome and ensure that decommissioning operations in the OCS are conducted properly.

Paperwork Reduction Act (PRA) of 1995

The proposed rule contains a collection of information that has been submitted to OMB for review and approval under § 3507(d) of the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. You may submit your comments directly to the Office of Information and Regulatory Affairs, OMB. Send a copy of your comments to MMS. Refer to the ''Addresses'' section for mailing instructions.

The PRA provides that an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by August 7, 2000. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the collection of information for this proposed rule is ''Proposed Rulemaking—30 CFR 250, Subpart Q—Decommissioning Activities'' (OMB control number 1010-NEW). Respondents include approximately 130 Federal OCS oil and gas or sulphur lessees. The frequency of response is on occasion or annually, depending upon the requirement. Responses to this collection of information are mandatory. MMS will protect proprietary information according to the Freedom of Information Act and 30 CFR 250.196, ''Data and

information to be made available to the public.''

This rulemaking consolidates information collection requirements on decommissioning from our current regulations in 30 CFR 250, subparts G, I, and J (approved under OMB control numbers 1010–0079, 1010–0058, and 1010–0050, respectively). These approved burdens will be correspondingly reduced when the new subpart Q regulations become final.

This rulemaking imposes only one new information collection burden. Section 250.1705 requires submission of an initial decommissioning plan in the Pacific OCS Region and Alaska OCS Region, which we estimate will require 20 burden hours per plan.

We estimate the total annual reporting ''hour'' burden for the proposed rule to be 3,222 hours, representing an average burden of 25 hours per respondent. There are no recordkeeping requirements. Following is a breakdown of this burden estimate.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart Q	Requirement	Average number per year	Burden hours	Annual burden hours
1703; 1704	Request approval for decommissioning	Burden included below		0
1705 (New)	Submit initial decommissioning plan in the Pacific OCS and Alaska OCS Regions.	2 plans	20	40
1709; 1711(g); 1712; 1713; 1714(b).	Submit form MMS–124 to plug wells; provide subsequent report; request alternate depth departure; request procedure to protect obstructions above seafloor; or certify area cleared of obstructions.	Burden included under 1010–0045.		0
1711(e), (d); 1717(b)	Identify and report subsea wellheads, casing stubs, or other obstructions; mark wells protected by a dome; mark location to be cleared as navigation hazard.	U.S. Coast Guard requirement.		0
1711(f)	Submit annual report on plans for re-entry to complete or permanently abandon the well..	75 reports	2	150
1714(a)	Request approval of well site clearance method	125 requests	4	500
1715; 1716; 1717(a), (g)	Verify facility and pipeline sites cleared of obstructions and submit certification letter.	120 verifications	12	1,440
1718; 1719; 1720; 1721; 1723.	Submit final application to remove platform or other subsea facility structures (including alternate depth departure) or approval to maintain, to conduct other operations, or to conserve as artificial reef.	120 applications	6	720
1722; 1723	Artificial reef permitting and re-use plan	U.S. Army Corps of Engineers and NARP requirements.		0
1724; 1725; 1726	Submit application to decommission pipeline in place or remove pipeline.	186 applications	2	372
Total Reporting		628 responses		3,222

MMS will summarize written responses to this notice and address them in the final rule preamble. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping ''non-hour cost'' burden resulting from the collection of information. We have not identified any, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and start-up cost component and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and start-up costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Natural gas, Petroleum, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur, Surety bonds.

Dated: June 22, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

Subpart G—[Removed and Reserved]

2. Subpart G (§§ 250.700–250.704) is removed and reserved.

Subpart I—Platforms and Structures

3. Section 250.913 is revised to read as follows:

§ 250.913 Platform removal and location clearance.

Refer to § 250.1714 through § 250.1723.

Subpart J—Pipelines and Pipeline Rights-of-Way

4. Section 250.1006 is revised to read as follows:

§ 250.1006 What are the requirements for taking a pipeline out of service?

If you take a pipeline out of service, you must:

(a) Blind flange or isolate the pipeline with a closed block valve at each end;

(b) Flush and fill with inhibited seawater any pipelines taken out of service for more than 1 year; and

(c) Return the pipeline to service within 5 years or decommission the pipeline according to § 250.1724 through § 250.1726.

§ 250.1007 [Amended]

5. In § 250.1007 paragraph (c) is removed.

6. Subpart Q is added to read as follows:

Subpart Q—Decommissioning Activities

General Requirements

Sec.
250.1700 What do the terms ''decommissioning'' and ''obstructions'' mean?
250.1701 Who must meet the obligations in this subpart?
250.1702 When do I accrue decommissioning obligations?
250.1703 What are the general requirements for decommissioning?
250.1704 When must I submit decommissioning applications?
250.1705 What information must I include in my initial platform removal application for the Pacific OCS Region or Alaska OCS Region?

Well Plugging Requirements

250.1706 Within what timeframe must I permanently plug all wells on a lease?
250.1707 When may MMS order me to permanently plug a well?
250.1708 What must I accomplish with well plugs?
250.1709 What information must I include to plug wells?
250.1710 How must I permanently plug wells?
250.1711 What are the requirements if I temporarily plug a well that I plan to re-enter?
250.1712 To what depth below the mud line must I clear a well site when it will no longer be used for oil, gas, or sulphur operations?
250.1713 When might MMS consider approving an alternate removal depth?

Site Clearance and Platform Decommissioning

250.1714 3What must I do to clear a well site of obstructions?
250.1715 What must I do to clear a facility of obstructions?
250.1716 What must I do to clear a buried pipeline of obstructions?
250.1717 What must I do to clear a trawling operation of obstructions?
250.1718 What are the requirements for removing platforms and subsea facilities?
250.1719 What information must I include in my final platform removal application?
250.1720 To what depth below the mud line must I remove a platform or other facility?
250.1721 When might MMS consider approving an alternate removal depth?
250.1722 What is MMS' policy on converting a platform or other facility to an artificial reef or other use?
250.1723 When might MMS approve partial structural removals for conversion to an artificial reef or other use?

Pipeline Decommissioning

250.1724 When may I decommission a pipeline in place?
250.1725 What are the requirements for decommissioning a pipeline in place?
250.1726 What are the requirements for removing a pipeline?

Authority: 43 U.S.C. 1331. *et seq.*

Subpart Q—Decommissioning Activities

General Requirements

§ 250.1700 What do the terms ''decommissioning'' and ''obstructions'' mean?

(a) Decommissioning means:

(1) Ending oil, gas, or sulphur operations; and

(2) Returning the lease or right-of-way to a condition that meets the requirements of regulations of MMS and other agencies that have jurisdiction over decommissioning activities.

(b) Obstructions are objects that were used in oil, gas, or sulphur operations and that, if left behind or abandoned in place, would hinder other users of the OCS. Obstructions include, but are not limited to, wellheads, casing stubs, mud line suspensions, subsea trees, jumper assemblies, umbilicals, manifolds, termination skids, production and export risers, platforms, templates, pilings, pipeline valves, and power cables (in the Pacific OCS Region).

§ 250.1701 Who must meet the obligations in this subpart?

The lessee, the owners of operating rights, and pipeline right-of-way owners are jointly and severally responsible for meeting the obligations as they accrue and until each obligation is met. In this subpart, the terms ''you'' and ''I'' refer to each lessee, owner of operating rights, and pipeline right-of-way owner.

§ 250.1702 When do I accrue decommissioning obligations?

You accrue the decommissioning obligations when you do any of the following:

(a) Drill a well;

(b) Install a platform, pipeline, or other facility;

(c) Create an obstruction to other users of the ocean;

(d) Become a lessee or the owner of operating rights of a lease on which there is a well that has not been plugged according to this subpart, a platform or other facility, or an obstruction; or

(e) Re-enter a well that was previously plugged according to this subpart.

§ 250.1703 What are the general requirements for decommissioning?

When the facilities are no longer useful for operations, you must:

(a) Get approval from the District Supervisor before decommissioning wells and from the Regional Supervisor before decommissioning facilities and pipelines;

(b) Squeeze or isolate all open perforations, plug all wellbores, sever all casings, and remove the wellhead;

(c) Remove all platforms and other facilities (including subsea equipment) to the depth required by § 250.1720 of this subpart;

(d) Decommission all pipelines; and

(e) Clear the seafloor of all obstructions created by lease and/or right-of-way operations.

§ 250.1704 When must I submit decommissioning applications?

You must submit decommissioning applications according to the following table.

DECOMMISSIONING APPLICATION SCHEDULE

Decommissioning applications	When to submit	Instructions
(a) Initial platform removal application [not required in the Gulf of Mexico OCS Region].	In the Pacific OCS Region or Alaska OCS Region, submit the application to the Regional Supervisor at least 2 years before production ceases.	Include information required under § 250.1705.
(b) Final platform removal application	Before removing a platform	Include information required under § 250.1719.
(c) Pipeline decommissioning application	Before you decommission the pipeline	Include information required under § 250.1725(a) or § 250.1726(a), as applicable.
(d) Form MMS–124, Sundry Notices and Reports on Wells.	(1) Before you plug each well; and	(i) Include information required under § 250.1709(a).
	(2) Within 30 days after you plug a well	(i) Include information required under § 250.1709(b).

§ 250.1705 What information must I include in my initial platform removal application for the Pacific OCS Region or Alaska OCS Region?

You must include the following information in your initial platform removal application for the Pacific OCS Region or Alaska OCS Region:

(a) Platform or other facility removal procedures, including the types of vessels and equipment to be used;

(b) Facilities (including pipelines) you plan to remove or leave in place;

(c) Platform or other facility transportation and disposal plans;

(d) Plans to protect marine life and the environment during decommissioning operations, including a brief assessment of the environmental impacts of the operations, and procedures and mitigation measures that you will take to minimize the impacts;

(e) Projected decommissioning schedule; and

(f) The consistency of the proposed project with that described in the Development and Production Plan.

Well Plugging Requirements

§ 250.1706 Within what timeframe must I permanently plug all wells on a lease?

You must plug all wells within 1 year after the lease terminates.

§ 250.1707 When may MMS order me to permanently plug a well?

MMS may order you to permanently plug a well if that well:

(a) Poses a hazard to safety or the environment; or

(b) Is not useful for lease operations and is not capable of profitable oil, gas, or sulphur production.

§ 250.1708 What must I accomplish with well plugs?

You must ensure that all well plugs:

(a) Provide downhole isolation of hydrocarbon and sulphur zones;

(b) Protect freshwater aquifers; and

(c) Prevent migration of formation fluids within the wellbore or to the seafloor.

§ 250.1709 What information must I include to plug wells?

(a) Before you plug a well, you must submit the following information on form MMS–124 and receive approval:

(1) The reason you are plugging the well;

(2) Applicable well logs and test data;

(3) Maximum possible surface pressure, and how it was determined;

(4) Type and weight of well-control fluid you will use;

(5) A description of the work; and

(6) A current and proposed well schematic and description that include:

(i) Well depth;

(ii) All perforated intervals;

(iii) Casing and tubing depths and details;

(iv) Subsurface equipment;

(v) Estimated tops of cement (and the basis of the estimate) in each casing annulus;

(vi) Plug locations;

(vii) Plug types;

(viii) Plug lengths;

(ix) Mud and cement use;

(x) Perforating and casing cutting plans;

(xi) Plug testing plans;

(xii) Casing removal (including information on explosives, if used); and

(xiii) Proposed casing removal depth.

(b) Within 30 days after you plug a well, you must submit form MMS–124 (subsequent report) and include the following information:

(1) Information included in paragraph (a) of this section with a final well schematic;

(2) Description of the plugging work;

(3) Nature and quantities of material used in the plugs; and

(4) If you cut and pulled any casing string, you must include the following:

(i) A description of the methods used (including information on explosives, if used);

(ii) Size and amount of casing removed; and

(iii) Casing removal depth.

§ 250.1710 How must I permanently plug wells?

You must permanently plug wells according to the table in this section. The District Supervisor may require additional well plugs as necessary.

PERMANENT WELL PLUGGING REQUIREMENTS

If you have	Then you must use
(a) Zones in open hole	Cement plugs from at least 100′ below the bottom to 100′ above the top of oil, gas, and fresh-water zones to isolate fluids in the strata.
(b) Open hole	(1) Cement plugs, by the displacement method, at least 100′ above and below deepest casing shoe;

PERMANENT WELL PLUGGING REQUIREMENTS—Continued

If you have	Then you must use
	(2) Cement retainers with effective back-pressure control 50′ to 100′ above the casing shoe and a cement plug to extend at least 100′ below the shoe and at least 50′ above the retainer; or (3) Bridge plugs 50′ to 100′ above the shoe with 50′ of cement on top of the bridge plug, for expected or known lost circulation conditions. You must test these plugs by one of the methods shown in paragraphs (k)(1) and (k)(2) of this section.
(c) Perforated zones that are currently open and not previously squeezed or isolated.	(1) A squeeze method to cement; (2) Cement plugs, by the displacement method, at least 100′ above to 100′ below the perforated interval, or down to a casing plug, whichever is less. If the perforated zones are isolated from the hole below, you may use any of the plugs specified in paragraphs (c)(3) through (c)(7) of this section instead of those specified in paragraphs (c)(1) and (c)(2) of this section. (3) Cement retainers with effective back-pressure control 50′ to 100′ above the top of the perforations and a cement plug that extends at least 100′ below the bottom of the perforations with 50′ of cement above the retainer; (4) Bridge plugs set within 50′ to 100′ of top of the perforations and 50′ of cement on top of the bridge plug; (5) Cement plugs at least 200′ in length, set by the displacement method, with the bottom of the plug 100′ above the perforated interval; (6) Through-tubing basket plugs within 100′ of the perforated interval topped with 50′ of cement; or (7) Tubing plugs within 100′ of the perforated interval topped with 50′ of cement and a minimum of 300′ of cement in the tubing and casing immediately above the uppermost packer in the wellbore.
(d) Casing stubs where the stub ends within casing.	(1) Cement plugs at least 100′ above and below the stub; (2) Cement retainers or permanent bridge plugs at least 50′ to 100′ above the stub and 100′ below with at least 50′ cement on top of the retainer; or (3) Cement plugs at least 200′ long with the bottom of the plug within 100′ above the stub.
(e) Casing stubs where the stub ends below the casing.	Plugs specified in paragraph (a) or (b) of this section, as applicable.
(f) Annular space that communicates with an open hole and extends to the mud line.	Cement plugs at least 200′ long in the annular space. For surface wells, pressure test each casing annulus to verify isolation.
(g) Subsea wells with unsealed annuli.	A cutter to sever the casing and you must set a stub plug.
(h) Cement displacement plugs	Tags to verify the position of each plug.
(i) To set a surface plug (all wells except temporarily plugged wells).	A cement surface plug at least 150′ long in the smallest casing that extends to the mud line with the top of the plug within the first 150′ below the mud line.
(j) Permafrost areas	(1) A fluid to be left in the hole that has a freezing point below the temperature of the permafrost, and a treatment to inhibit corrosion; and (2) Cement plugs set before freezing and have a low heat of hydration.
(k) To test a plug (required for the first plug below the surface plug and/or lost circulation area plugs in open hole).	(1) A test to verify plug integrity with 15,000 pounds of pipe weight on the cement plug, cement retainer, or bridge plug; or (2) 1,000 pounds per square inch pump pressure with a result of 10 percent or less pressure drop during 15 minutes. The District Supervisor may require testing other plugs to prevent fluid migration.
(l) Fluid left in the hole	Fluid in the intervals between the plugs dense enough to exert a hydrostatic pressure that is greater than the respective formation pressures.

§ 250.1711 What are the requirements if I temporarily plug a well that I plan to re-enter?

You must do the following:

(a) Set plugs for permanently plugged wells listed in the table in § 250.1710; however, you do not need to sever the casings, remove the wellhead, or clear the site;

(b) Set a bridge plug or a cement plug at least 100 feet long at the base of the deepest casing string unless the casing string has been cemented and has not been drilled out. If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole;

(c) Set a retrievable or a permanent-type bridge plug or a cement plug at least 100 feet long in the casing within the first 200 feet below the mud line;

(d) Identify and report subsea wellheads, casing stubs, or other obstructions that extend above the mud line according to U.S. Coast Guard (USCG) requirements;

(e) Mark wells protected by a dome in less than 100 feet of water with a buoy installed according to USCG requirements;

(f) Provide annual reports to the Regional Supervisor describing your plans for well re-entry to complete or to permanently plug; and

(g) Except in deep water areas or other locations where there are no commercial fishing activities, protect subsea wellheads, casing stubs, mud line suspensions, or other obstructions remaining above the seafloor to allow fishing gear to pass over the structure without damage to the structure or fishing gear by using one of the following or other procedure, as

approved by the Regional or District Supervisor:

(1) A caisson designed according to § 250.906 and equipped with aids to navigation;

(2) A jacket designed according to § 250.906 and equipped with aids to navigation; or

(3) A subsea dome that does not extend more than 10 feet above the seafloor and over which you trawl when you install it and inspect annually.

§ 250.1712 To what depth below the mud line must I clear a well site when it will no longer be used for oil, gas, or sulphur operations?

Unless the District Supervisor approves an alternate depth, you must clear all wellheads and casings to at least 15 feet below the mud line.

§ 250.1713 When might MMS consider approving an alternate removal depth?

MMS may allow you to depart from the requirement for removing subsea wellheads and casings to 15 feet below the mud line when:

(a) The wellheads and casings would not become hazards to other users of the seafloor or area and geotechnical and other information you provide demonstrates that erosional processes capable of exposing the obstructions are not expected; or (b) The water depth is greater than 800 meters.

Site Clearance and Platform Decommissioning

§ 250.1714 What must I do to clear a well site of obstructions?

For each well site you must verify clearance and certify your verification.

(a) For wells, you must verify site clearance by one or more of the following methods as approved by the District Supervisor:

(1) Drag a trawl in a grid-like pattern across a 300-foot-radius circle centered on an exploration or delineation well drilled with a Mobile Offshore Drilling Unit;

(2) Scan across the location with a sonar search of at least 500 kHz frequency; or (3) Use other radii or methods based on particular site conditions.

(b) You must certify that the area was cleared of all obstructions and submit the following information on form MMS–124 within 30 days after you complete the verification activities:

(1) The date the work was performed;

(2) The extent of the area surveyed around the location; and (3) The survey method.

§ 250.1715 What must I do to clear a facility of obstructions?

To clear a facility of obstructions, you must comply with the Regional Supervisor's clearance requirements and, at minimum:

(a) Clear obstructions from:

(1) A 1,320-foot-radius circle centered on the geometric center of the facility; or (2) A 600-foot-radius circle centered on a single well caisson and well protectors.

(b) In less than a 300-foot water depth, trawl 100 percent of the limits described in paragraph (a) of this section in two directions, and in greater than a 300-foot water depth, scan across the location with a sonar of at least 500 kHz frequency;

§ 250.1716 What must I do to clear a buried pipeline of obstructions?

For buried active pipelines, you must trawl without any restrictions; however, you must contact the pipeline owner or operator to determine the condition of the pipelines to be trawled.

§ 250.1717 What must I do to clear a trawling operation of obstructions?

For trawling operations for both facilities and pipelines, you must do all of the following to clear obstructions:

(a) Complete site clearance verification to the specifications of the Regional Supervisor within 60 days after you complete the structure removal;

(b) Mark the location to be cleared as a hazard to navigation according to USCG requirements until you complete the site clearance procedures;

(c) Use a vessel to verify site clearance that is equipped with a navigational positioning system capable of providing position accuracy of (±30 feet and a calibrated navigation system;

(d) Use a trawling contractor with a valid commercial trawling license and no corporate or other financial ties to the company that performed the salvage work;

(e) Use a trawling net that is representative of those used in the commercial fishing industry and having a net strength equal to that provided by No. 18 twine;

(f) Not trawl closer than 300 feet to a shipwreck; and (g) Ensure that the company performing the location clearance sends a letter to the Regional Supervisor certifying it cleared the location of all obstructions. The company must send the letter within 30 days after site clearance is verified and must include the following information:

(1) The date the work was performed and the vessel involved;

(2) The extent of the area surveyed;

(3) The survey method used;

(4) The results of the survey, including a list of any debris removed or statement from the trawling contractor that no objects were recovered;

(5) A post-trawling job plot or map showing trawled area; and (6) An additional letter signed by an authorized lessee/operator company representative stating that they witnessed the trawling survey.

§ 250.1718 What are the requirements for removing platforms and subsea facilities?

(a) You must submit a final platform removal application to the Regional Supervisor with the information listed in § 250.1719 before removing a platform;

(b) You must remove all platforms and subsea facilities in a manner approved by the Regional Supervisor to ensure that the location has been cleared of all obstructions to other activities in the area;

(c) You must retrieve all mooring lines, anchors, and all related equipment that constitute an obstruction;

(d) You must remove subsea trees, jumper assemblies, umbilicals, manifolds, and termination skids in conjunction with well plugging activities;

(e) You must flush and remove all production and export risers with seawater from the seabed; and

(f) Within 1 year after lease termination or right-of-way relinquishment, you must remove all platforms and subsea facilities, including those listed in paragraphs (c) and (d) of this section, according to the approved final platform removal application. This paragraph does not apply if you receive either:

(1) Approval to maintain the platform and subsea facilities to conduct other operations; or

(2) A waiver to conserve the structure as an artificial reef.

§ 250.1719 What information must I include in my final platform removal application?

You must submit three copies of the final platform removal application if you are proposing to use explosives or two copies if you are not using explosives to the Regional Supervisor. Include all of the following information:

(a) Identification of the responsible party including:

(1) Lease operator/right-of-way holder;

(2) Address;

(3) Contact person and telephone number; and

(4) Shore base.

(b) Identification of the structure you are removing including:

(1) Platform Name/Complex ID Number;

(2) Location (lease/right-of-way, area, block, and block coordinates);

(3) Date installed (year);

(4) Proposed date of removal (Month/Year); and

(5) Water depth.

(c) Description of the structure you are removing including:

(1) Configuration (attach a photograph or a diagram);

(2) Size;

(3) Number of legs/casings/pilings;

(4) Diameter and wall thickness of legs/casings/pilings;

(5) Piles grouted inside or outside;

(6) Brief description of soil composition and condition;

(7) The sizes and weights of the jacket, topsides (by module), conductors, and pilings;

(8) The maximum removal lift weight and estimated number of main lifts to remove the structure; and

(9) A description of the vessel(s) that you will use to remove the structure.

(d) Identification of the purpose, including:

(1) Lease expiration/right-of-way relinquishment date; and

(2) Reason for removing the structure.

(e) A description of the removal method including:

(1) Brief description of the method to be used; and

(2) If you are using explosives, provide the following:

(i) Type of explosives;

(ii) Number and sizes of charges;

(iii) List whether you are using single shot or multiple shots;

(iv) If multiple shots, list sequence and timing of detonations;

(v) List whether you are using a bulk or shaped charge;

(vi) Depth of detonation below mud line; and

(vii) List whether you are placing the explosives inside or outside the pilings.

(3) If you will use divers or acoustic devices to conduct a pre-removal survey to detect the presence of turtle and marine mammals, describe the proposed detection method.

(4) A statement telling whether or not you will use transducers to measure the pressure and impulse of the detonations.

(5) A statement telling whether or not you will use divers to survey the area after removal to determine any effects on marine life.

(f) If available, provide the results of any recent biological surveys conducted in the vicinity of the structure and recent observations of turtles or marine mammals at the structure site.

§ 250.1720 To what depth below the mud line must I remove a platform or other facility?

Unless the Regional Supervisor approves an alternate removal depth, you must remove all platforms or other facilities (including templates, and pilings) to at least 15 feet below the mud line.

§ 250.1721 When might MMS consider approving an alternate removal depth?

The Regional Supervisor may approve an alternate removal depth if:

(a) The remaining structure or other facility would not become a hazard to other users of the seafloor or area and geotechnical and other information you provide demonstrates that erosional processes capable of exposing the obstructions are not expected; or

(b) The water depth is greater than 800 meters.

§ 250.1722 What is MMS' policy on converting a platform or other facility to an artificial reef or other use?

MMS supports and encourages the re-use of obsolete offshore petroleum structures as artificial reefs in U.S. waters.

(a) The structure must not pose an unreasonable impediment to existing facilities such as active pipelines or future mineral development.

(b) The re-use plan must comply with the artificial reef permitting requirements of the U.S. Corps of Engineers (Corps) and the criteria in the National Artificial Reef Plan (NARP).

(c) The state agency responsible for managing marine fisheries resources must accept title and liability for the structure before MMS will release the Federal lessee from obligations in the lease instrument.

(d) As appropriate, MMS may facilitate cooperation between Federal lessees, States, and other Federal agencies concerning the re-use of the structure. MMS will share information with others concerning the environmental, social, and economic consequence of re-using the structure.

§ 250.1723 When might MMS approve partial structural removals for conversion to an artificial reef or other use?

The Regional Supervisor may approve a partial structural removal if you meet all of the following conditions:

(a) The remaining structure becomes part of the NARP and the State agency responsible for managing marine fisheries resources acquires a Corps permit and accepts title and liability for the structure; and

(b) You provide an unobstructed water column above the structure sufficient to ensure safety of navigation.

Pipeline Decommissioning

§ 250.1724 When may I decommission a pipeline in place?

You may decommission a pipeline in place when the Regional Supervisor determines:

(a) The pipeline does not constitute a hazard to navigation and commercial fishing operations, unduly interfere with other uses of the OCS, or have adverse environmental effects; and

(b) Technical and environmental information shows that pipelines are not likely to interfere with other uses of the OCS.

§ 250.1725 What are the requirements for decommissioning a pipeline in place?

You must do the following to decommission a pipeline in place:

(a) Submit a pipeline decommissioning application in triplicate to the Regional Supervisor that includes the following information:

(1) Reason for the operation;

(2) Proposed procedures;

(3) Length (feet) of segment to be decommissioned; and

(4) Length (feet) of segment remaining.

(b) Pig the line, unless the Regional Supervisor determines that pigging is not practical;

(c) Flush the line;

(d) Fill the line with seawater;

(e) Cut and plug each end;

(f) Bury each end at least 3 feet below the seafloor or cover with protective concrete mats, if required by the Regional Supervisor;

(g) Remove all valves and other appurtenances that could unduly interfere with other uses of the OCS;

(h) Within 1 year after lease termination or right-of-way relinquishment, decommission the pipeline(s); and

(i) Remove a previously decommissioned pipeline if MMS subsequently determines that a pipeline is a hazard.

§ 250.1726 What are the requirements for removing a pipeline?

Before removing a pipeline, you must:

(a) Submit a pipeline removal application in triplicate to the Regional Supervisor that includes the following information:

(1) Proposed removal procedures, including the types of vessels and equipment to be used;

(2) Pipeline transportation and disposal plans;

(3) Plans to protect marine life and the environment during removal operations,

including a brief assessment of the environmental impacts of the removal operations and procedures and mitigation measures that will be taken to minimize such impacts; and

(4) Projected removal schedule and duration.

(b) Pig the line, unless the Regional Supervisor determines that pigging is not practical; and

(c) Flush the line.

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 102

RIN: 0651–AB21

Public Information, Freedom of Information and Privacy

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking

SUMMARY: The United States Patent and Trademark Office proposes to add regulations implementing the Freedom of Information Act (FOIA), including the Electronic Freedom of Information Act (EFOIA) Amendments of 1996, and the Privacy Act (PA). These proposed rules are based on rules recently proposed by the Department of Commerce.

DATES: Comments must be received on or before August 7, 2000.

ADDRESSES: Send all comments—

1. Electronically to ''PBORulemaking@uspto.gov'', Subject: FOIA/PA Rules;

2. By mail to Director of the United States Patent and Trademark Office, Box 8, Washington, D.C. 20231, ATTN: FOIA/PA Rules; or

3. By facsimile to 703–305–9373, ATTN: FOIA/PA Rules.

FOR FURTHER INFORMATION CONTACT: Joseph G. Piccolo, 703–305–9035.

SUPPLEMENTARY INFORMATION:

Comment Format

USPTO prefers to receive comments in electronic form, either via the Internet or on a 3¼ inch diskette. Comments submitted in electronic form should be submitted as ASCII text. Special characters and encryption should not be used.

Background

The Patent and Trademark Office Efficiency Act (PTOEA) (Pub. L. 106–113, 113 Stat. 1501A–572) reestablished the Patent and Trademark Office as United States Patent and Trademark Office (USPTO), a performance-based organization with responsibility for its own operations. Consequently, USPTO has or is gaining many functions formerly provided by the Department of Commerce. The rules proposed in this notice adopt the substance of rules recently proposed by the Department of Commerce, 65 FR 34606 (May 31, 2000). Where appropriate, these proposed rules have been streamlined and tailored to reflect the practices of USPTO and its constituencies. In particular, USPTO has no national security classification authority so determinations regarding classified records will be referred to the classifying authority. Moreover, the proposed Commerce rules provide a great deal of guidance to its component bureaus. USPTO will not decentralize its initial action authority to its business units. These proposed rules will apply to FOIA and Privacy Act requests filed after October 1, 2000.

Other Considerations

This rule is not significant under Executive Order 12866.

This rule does not contain a ''collection of information'' as defined by the Paperwork Reduction Act.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the USPTO General Counsel has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Under FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Moreover, both FOIA and these rules set thresholds below which fees are not charged to reduce the effect of FOIA fees still further. Further, the number of ''small entities'' (within the meaning of the Regulatory Flexibility Act) that make FOIA requests is relatively small compared to the number of individuals who make such requests.

List of Subjects in 37 CFR Part 102

Administrative practice and procedure, Freedom of Information, Privacy, Public information.

For the reasons stated in the preamble, USPTO proposes to amend 37 CFR Chapter I by adding Part 102 to read as follows:

PART 102—DISCLOSURE OF GOVERNMENT INFORMATION

Subpart A—Freedom of Information Act

Sec.

102.1 General.
102.2 Public reference facilities.
102.3 Records under FOIA.
102.4 Requirements for making requests.
102.5 Responsibility for responding to requests.
102.6 Time limits and expedited processing.
102.7 Responses to requests.
102.9 Business Information.
102.10 Appeals from initial determinations or untimely delays.
102.11 Fees.

Subpart B—Privacy Act

102.21 Purpose and scope.
102.22 Definitions.
102.23 Procedures for making inquiries.
102.24 Procedures for making requests for records.
102.25 Disclosure of requested records to individuals.
102.26 Special procedures: Medical records.
102.27 Procedures for making requests for correction or amendment.
102.28 Review of requests for correction or amendment.
102.29 Appeal of initial adverse determination on correction or amendment.
102.30 Disclosure of record to person other than the individual to whom it pertains.
102.31 Fees.
102.32 Penalties.
102.33 General exemptions.
102.34 Specific exemptions.

Appendix to Part 102—Systems of Records Noticed by Other Federal Agencies and Applicable to USPTO Records, and Applicability of this Part Thereto

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 35 U.S.C. 2(b)(2), 21, 41, 42, 122; 44 U.S.C. 3101.

Subpart A—Freedom of Information Act

§ 102.1 General.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the United States Patent and Trademark Office (USPTO) follows to make publicly available the materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular USPTO activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part. USPTO's policy is to make discretionary disclosures of records or information exempt from disclosure under FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy

does not create any right enforceable in court.

(b) As used in this subpart, *FOIA Officer* means the USPTO employee designated to administer FOIA for USPTO. To ensure prompt processing of a request, correspondence should be addressed to the FOIA Officer, United States Patent and Trademark Office, Washington DC 20231 or delivered by hand to Crystal Park Two, 2121 Crystal Drive, Suite 714, Arlington, Virginia.

§ 102.2 Public reference facilities.

(a) USPTO maintains a public reference facility that contains the records FOIA requires to be made regularly available for public inspection and copying; furnishes information and otherwise assists the public concerning USPTO operations under FOIA; and receives and processes requests for records under FOIA. The FOIA Officer is responsible for determining which of USPTO's records are required to be made available for public inspection and copying, and for making those records available in USPTO's reference and records inspection facility. The FOIA Officer shall maintain and make available for public inspection and copying a current subject-matter index of USPTO's public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), USPTO has determined that it is unnecessary and impracticable to publish quarterly, or more frequently, and distribute copies of the index and supplements thereto. The public reference facility is located in the Public Search Room, Crystal Plaza Three, 2021 South Clark Place, Room 1A01, Arlington, Virginia.

(b) The FOIA Officer shall also make public inspection facility records created by USPTO on or after November 1, 1996, available electronically through USPTO's World Wide Web site (http://www.uspto.gov). Information available at the site shall include:

(1) The FOIA Officer's index of the public inspection facility records, which indicates which records are available electronically; and

(2) The general index referred to in paragraph (c)(3) of this section.

(c) USPTO maintains and makes available for public inspection and copying:

(1) A current index providing identifying information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1967, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;

(2) Copies of records that have been released and that the FOIA Officer determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records;

(3) A general index of the records described in paragraph (c)(2) of this section;

(4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(5) Those statements of policy and interpretations that have been adopted by USPTO and are not published in the **Federal Register**; and

(6) Administrative staff manuals and instructions to staff that affect a member of the public.

§ 102.3 Records under FOIA.

(a) Records under FOIA include all Government records, regardless of format, medium or physical characteristics, and include electronic records and information, audiotapes, videotapes, and photographs.

(b) There is no obligation to create, compile, or obtain from outside USPTO a record to satisfy a FOIA request. With regard to electronic data, the issue of whether records are created or merely extracted from an existing database is not always apparent. When responding to FOIA requests for electronic data where creation of a record or programming becomes an issue, USPTO shall undertake reasonable efforts to search for the information in electronic format.

(c) USPTO officials may, upon request, create and provide new information pursuant to user fee statutes, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. This is outside the scope of FOIA.

(d) The FOIA Officer shall preserve all correspondence pertaining to the requests received under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or a National Archives and Records Administration's General Records Schedule. The FOIA Officer shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under FOIA.

§ 102.4 Requirements for making requests.

(a) A request for USPTO records that are not customarily made available to the public as part of USPTO's regular informational services must be in writing, and shall be processed under FOIA, regardless of whether FOIA is mentioned in the request. Requests should be sent to the USPTO FOIA Officer, United States Patent and Trademark Office, Washington DC 20231 (records FOIA requires to be made regularly available for public inspection and copying are addressed in § 102.2(c)). For the quickest handling, the request letter and envelope should be marked ''Freedom of Information Act Request.'' For requests for records about oneself, § 102.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to the requester or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

(b) The records requested must be described in enough detail to enable USPTO personnel to locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions for the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that USPTO will locate those records. If the FOIA Officer determines that a request does not reasonably describe records, the FOIA Officer will inform the requester what additional information is needed or why the request is otherwise insufficient. The FOIA Officer also may give the requester an opportunity to discuss the request so that it may be modified to meet the requirements of this section.

§ 102.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the USPTO will process FOIA requests directed to USPTO. In determining records responsive to a request, the FOIA Officer shall include only those records within USPTO's possession and control as of the date the FOIA Officer receives the request.

(b) *Consultations and referrals.* If the FOIA Officer receives a request for a record in USPTO's possession in which another Federal agency subject to FOIA

has the primary interest, the FOIA Officer shall refer the record to that agency for direct response to the requester. The FOIA Officer shall consult with another Federal agency before responding to a requester if the FOIA Officer receives a request for a record in which another Federal agency subject to FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(c) *Notice of referral.* Whenever a FOIA Officer refers a document to another Federal agency for direct response to the requester, the FOIA Officer will ordinarily notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the FOIA request was received by the first Federal agency.

(e) *Agreements regarding consultations and referrals.* The FOIA Officer may make agreements with other Federal agencies to eliminate the need for consultations or referrals for particular types of records.

§ 102.6 Time limits and expedited processing.

(a) *In general.* The FOIA Officer ordinarily shall respond to requests according to their order of receipt.

(b) *Initial response and appeal.* Subject to paragraph (c)(1) of this section, an initial response shall be made within 20 working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper FOIA Officer identified in accordance with § 102.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.

(c) *Unusual circumstances.* (1) In unusual circumstances as specified in paragraph (c)(2) of this section, the FOIA Officer may extend the time limits in paragraph (b) of this section by notifying the requester in writing as soon as practicable of the unusual circumstances and of the date by which processing of the request is expected to be completed. Extensions of time for the initial determination and extensions on appeal may not exceed a total of ten working days, unless the requester agrees to a longer extension, or the FOIA Officer provides the requester with an opportunity either to limit the scope of the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or a modified request.

(2) As used in this section, *unusual circumstances means,* but only to the extent reasonably necessary to properly process the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another Federal agency having a substantial interest in the determination of the request.

(3) Unusual circumstances do not include a delay that results from a predictable workload of requests, unless USPTO demonstrates reasonable progress in reducing its backlog of pending requests. Refusal to reasonably modify the scope of a request or arrange an alternate time frame may affect a requester's ability to obtain judicial review.

(4) If the FOIA Officer reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, the FOIA Officer may aggregate them. Multiple requests involving unrelated matters will not be aggregated.

(d) *Multitrack processing.* (1) The FOIA Officer may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (e) of this section.

(2) The FOIA Officer may provide requesters in a slower track with an opportunity to limit the scope of their requests in order to qualify for faster processing. The FOIA Officer may contact the requester by telephone or by letter, whichever is most efficient in each case.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited treatment whenever it is determined they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) The loss of substantial due process rights;

(iii) A matter of widespread and exceptional media interest in which there exist questions about the Government's integrity that affect public confidence; or

(iv) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should be sent to the FOIA Officer.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (e)(1)(iv) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category described in paragraph (e)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of receipt of a request for expedited processing, the FOIA Officer will decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 102.7 Responses to requests.

(a) *Grants of requests.* If the FOIA Officer makes a determination to grant a request in whole or in part, the FOIA Officer will notify the requester in writing. The FOIA Officer will inform the requester in the notice of any fee charged under § 102.11 and disclose records to the requester promptly upon

payment of any applicable fee. Records disclosed in part shall be marked or annotated to show each applicable FOIA exemption and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(b) *Adverse determinations of requests.* If the FOIA Officer makes an adverse determination regarding a request, the FOIA Officer will notify the requester of that determination in writing. An adverse determination is a denial of a request in any respect, namely: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to FOIA (except that a determination under § 102.11(j) that records are to be made available under a fee statute other than FOIA is not an adverse determination); a determination against the requester on any disputed fee matter, including a denial of a request for a fee waiver; or a denial of a request for expedited treatment. Each denial letter shall be signed by the FOIA Officer and shall include:

(1) The name and title or position of the denying official;

(2) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);

(3) An estimate of the volume of records or information withheld, in number of pages or some other reasonable form of estimation. This estimate need not be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and

(4) A statement that the denial may be appealed, and a list of the requirements for filing an appeal under § 102.10(b).

§ 102.9 Business Information.

(a) *In general.* Business information obtained by USPTO from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For the purposes of this section:

(1) *Business information* means commercial or financial information, obtained by USPTO from a submitter, which may be protected from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

(2) *Submitter* means any person or entity outside the Federal Government from whom USPTO obtains business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The FOIA Officer shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity under paragraph (f) of this section to object to disclosure of any specified portion of that information. Such written notice shall be sent via certified mail, return receipt requested, or similar means. The notice shall either describe the business information requested or include copies of the requested records containing the information. When notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(e) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The information has been designated in good faith by the submitter as protected from disclosure under FOIA exemption 4; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under FOIA exemption 4.

(f) *Opportunity to object to disclosure.* The FOIA Officer shall allow a submitter seven working days (i.e., excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the written notice described in paragraph (d) of this section to provide the FOIA Officer with a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any portion of the information under any exemption of FOIA and, in the case of exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* The FOIA Officer shall consider a submitter's objections and specific grounds under FOIA for nondisclosure in deciding whether to disclose business information. If the FOIA Officer decides to disclose business information over the objection of a submitter, the FOIA Officer shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the business information to be disclosed; and

(3) A statement that the FOIA Officer intends to disclose the information seven working days from the date the submitter receives the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the FOIA Officer shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the FOIA Officer shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever a FOIA Officer provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the FOIA Officer shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the FOIA Officer shall notify the requester(s).

§ 102.10 Appeals from initial determinations or untimely delays.

(a) If a request for records is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse initial determination regarding any other matter under this subpart (as described in § 102.7(b)), the requester may file a written appeal, which must be received by the Office of General Counsel within thirty calendar days of the date of the written denial or, if there has been no determination, may be submitted anytime after the due date, including the last extension under § 102.6(c), of the determination.

(b) Appeals shall be decided by a Deputy General Counsel. Appeals should be addressed to the General Counsel, United States Patent and Trademark Office, Washington, DC 20231. Both the letter and the appeal envelope should be clearly marked ''Freedom of Information Appeal''. The appeal must include a copy of the original request and the initial denial, if any, and may include a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

(c) If an appeal is granted, the person making the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees determined in accordance with § 102.11.

(d) If no determination of an appeal has been sent to the requester within the twenty-working-day period specified in § 102.6(b) or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to the request, giving rise to a right of judicial review under 5 U.S.C. 552(a)(6)(C). If the person making a request initiates a civil action against USPTO based on the provision in this paragraph, the administrative appeal process may continue.

(e) A determination on appeal shall be in writing and, when it denies records in whole or in part, the letter to the requester shall include:

(1) A brief explanation of the basis for the denial, including a list of applicable FOIA exemptions and a description of how the exemptions apply;

(2) A statement that the decision is final;

(3) Notification that judicial review of the denial is available in the United States district court for the district in which the requester resides or has its principal place of business, the United States District Court for the Eastern District of Virginia, or the District of Columbia; and

(4) The name and title or position of the official responsible for denying the appeal.

§ 102.11 Fees.

(a) *In general.* USPTO shall charge for processing requests under FOIA in accordance with paragraph (c) of this section, except when fees are limited under paragraph (d) of this section or when a waiver or reduction of fees is granted under paragraph (k) of this section. USPTO shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

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

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. The FOIA Officer shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the FOIA Officer has reasonable cause to doubt a requester's stated use, the FOIA Officer shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses USPTO incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. The FOIA Officer shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution, and that the records are sought to further scholarly research rather than for a commercial use.

(5) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research rather than for a commercial use.

(6) *Representative of the news media, or news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if they can qualify as disseminators of ''news'') that make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but the FOIA Officer shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare

it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Officer shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) *Fees.* In responding to FOIA requests, the FOIA Officer shall charge the fees summarized in chart form in paragraphs (c)(1) and (c)(2) of this section and explained in paragraphs (c)(3) through (c)(5) of this section, unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) The four categories and chargeable fees are:

Category	Chargeable fees
(i) Commercial Use Requesters.	Search, Review, and Duplication.
(ii) Educational and Non-commercial Scientific Institution Requesters.	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media.	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters.	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search.	Actual direct cost, including operator time.
(iii) Duplication of records:.	
(A) Paper copy reproduction.	$.15 per page
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes preparation for release, i.e. excising).	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(3) *Search.* (i) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. The FOIA Officer will charge for time spent searching even if no responsive records are located or if located records are entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(4) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $.15 cents per page. For copies produced by computer, such as tapes or printouts, the FOIA Officer shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the FOIA Officer will charge the direct costs of that duplication.

(5) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when the FOIA Officer determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, the FOIA Officer will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) Whenever a total fee calculated under paragraph (c) of this section is $20.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of the search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $20.00.

(e) *Notice of anticipated fees over $20.00.* When the FOIA Officer determines or estimates that the fees to be charged under this section will be more than $20.00, the FOIA Officer shall notify the requester of the actual or estimated fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the FOIA Officer shall advise the requester that the estimated fee may be only a portion of the total fee. If the FOIA Officer has notified a requester that actual or estimated fees are more than $20.00, the FOIA Officer shall not consider the request received or process it further until the requester agrees to pay the anticipated total fee. Any such agreement should be in writing. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with USPTO personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, the FOIA Officer shall ordinarily charge the direct cost of special services. Such special services could include certifying that records are true copies or sending records by other than ordinary mail.

(g) *Charging interest.* The FOIA Officer shall charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until payment is received by the FOIA Officer. The FOIA Officer shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* If a FOIA Officer reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer may aggregate those requests and charge accordingly. The FOIA Officer may presume that multiple requests of this type made within a 30-calendar-day period have been made in order to avoid fees. If requests are separated by a longer period, the FOIA Officer shall aggregate them only if a solid basis exists for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, the FOIA Officer shall not require the requester to make an advance payment: a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a payment before copies are sent to a requester) is not an advance payment.

(2) If the FOIA Officer determines or estimates that a total fee to be charged under this section will be more than $250.00, the requester must pay the entire anticipated fee before beginning to process the request, unless the FOIA Officer receives a satisfactory assurance of full payment from a requester who has a history of prompt payment.

(3) If a requester has previously failed to pay a properly charged FOIA fee to USPTO or another responsible Federal agency within 30 calendar days of the date of billing, the FOIA Officer shall require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the FOIA Officer begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which the FOIA Officer requires payment under paragraphs (i)(2) or (3) of this section, the request shall not be considered received and further work will not be done on it until the required payment is received.

(5) Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, the FOIA Officer shall make records available to the requester only upon receipt of full payment of the fee.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute (except for FOIA) that specifically requires USPTO or another responsible Federal agency to set and collect fees for particular types of records. If records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, the FOIA Officer shall inform requesters of how to obtain records from those sources.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if the FOIA Officer determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, the FOIA Officer shall consider the following factors:

(i) *The subject of the request:* whether the subject of the requested records concerns the operations or activities of the Government. The subject of the requested records must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed:* whether the disclosure is ''likely to contribute'' to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure:* whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration. It shall be presumed that a requester who merely provides information to media sources does not satisfy this consideration.

(iv) *The significance of the contribution to public understanding:* whether the disclosure is likely to contribute ''significantly'' to public understanding of Government operations or activities. The public's understanding of the subject in question prior to the disclosure must be significantly enhanced by the disclosure.

(3) To determine whether the second fee waiver requirement is met, the FOIA Officer shall consider the following factors:

(i) *The existence and magnitude of a commercial interest:* whether the requester has a commercial interest that would be furthered by the requested disclosure. The FOIA Officer shall consider any commercial interest of the requester (with reference to the definition of ''commercial use request'' in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure:* whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified if the public interest standard (paragraph (k)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. The FOIA Officer ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) If only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k) (2) and (3) of this section, insofar as they apply to each request.

Subpart B—Privacy Act

§ 102.21 Purpose and scope.

(a) The purpose of this subpart is to establish policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a) (the Act). The main objectives are to facilitate full exercise of rights conferred on individuals under the Act and to ensure the protection of privacy as to individuals on whom USPTO maintains records in systems of records under the Act. USPTO accepts the responsibility to act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a citizen of the United States or an alien lawfully admitted for permanent residence into the United States, regardless of the age of the individual. Further, USPTO accepts the obligations to maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions, to maintain that information with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness in determinations made by USPTO about the individual, to obtain information from the individual to the extent practicable, and to take every reasonable step to protect that information from unwarranted disclosure. USPTO will maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity. An individual's name and address will not be sold or rented by USPTO unless such action is specifically authorized by law; however, this provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(b) This subpart is administered by the Privacy Officer of USPTO.

(c) Matters outside the scope of this subpart include the following:

(1) Requests for records which do not pertain to the individual making the request, or to the individual about whom the request is made if the requester is the parent or guardian of the individual;

(2) Requests involving information pertaining to an individual which is in a record or file but not within the scope of a system of records notice published in the **Federal Register**;

(3) Requests to correct a record where a grievance procedure is available to the individual either by regulation or by provision in a collective bargaining agreement with USPTO, and the individual has initiated, or has expressed in writing the intention of initiating, such grievance procedure. An individual selecting the grievance procedure waives the use of the procedures in this subpart to correct or amend a record; and,

(4) Requests for employee-employer services and counseling which were routinely granted prior to enactment of the Act, including, but not limited to, test calculations of retirement benefits, explanations of health and life insurance programs, and explanations of tax withholding options.

(d) Any request for records which pertains to the individual making the request, or to the individual about whom the request is made if the requester is the parent or guardian of the individual, shall be processed under the Act and this subpart and under the Freedom of Information Act and USPTO's implementing regulations at Subpart A of this part, regardless whether the Act or the Freedom of Information Act is mentioned in the request.

§ 102.22 Definitions.

(a) All terms used in this subpart which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this subpart:

(1) *Act* means the ''Privacy Act of 1974, as amended (5 U.S.C. 552a)''.

(2) *Appeal* means a request by an individual to review and reverse an initial denial of a request by that individual for correction or amendment.

(3) *USPTO* means the United States Patent and Trademark Office.

(4) *Inquiry* means either a request for general information regarding the Act and this subpart or a request by an individual (or that individual's parent or guardian) that USPTO determine whether it has any record in a system of records which pertains to that individual.

(5) *Person* means any human being and also shall include but not be limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(6) *Privacy Officer* means a USPTO employee designated to administer this subpart.

(7) *Request for access* means a request by an individual or an individual's parent or guardian to see a record which is in a particular system of records and which pertains to that individual.

(8) *Request for correction or amendment* means the request by an individual or an individual's parent or guardian that USPTO change (either by correction, amendment, addition or deletion) a particular record in a system of records which pertains to that individual.

§ 102.23 Procedures for making inquiries.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to USPTO. The inquiry should be made either in person at Crystal Park Two, 2121 Crystal Park Drive, Suite 714, Arlington, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, Washington DC 20231 or to the official identified in the notification procedures paragraph of the systems of records notice published in the **Federal Register**. If an individual believes USPTO maintains a record pertaining to that individual but does not know which system of records might contain such a record, the USPTO Privacy Officer will provide assistance in person or by mail.

(b) Inquiries submitted by mail should include the words ''PRIVACY ACT INQUIRY'' in capital letters at the top of the letter and on the face of the envelope. If the inquiry is for general information regarding the Act and this subpart, no particular information is required. USPTO reserves the right to require compliance with the identification procedures appearing at § 102.24(d) where circumstances warrant. If the inquiry is a request that USPTO determine whether it has, in a given system of records, a record which pertains to the individual, the following information should be submitted:

(1) Name of individual whose record is sought;

(2) Individual whose record is sought is either a U.S. citizen or an alien lawfully admitted for permanent residence;

(3) Identifying data that will help locate the record (for example, maiden name, occupational license number, period or place of employment, etc.);

(4) Record sought, by description and by record system name, if known;

(5) Action requested (that is, sending information on how to exercise rights under the Act; determining whether requested record exists; gaining access to requested record; or obtaining copy of requested record);

(6) Copy of court guardianship order or minor's birth certificate, as provided in § 102.24(f)(3), but only if requester is guardian or parent of individual whose record is sought;

(7) Requester's name (printed), signature, address, and telephone number (optional);

(8) Date; and,

(9) Certification of request by notary or other official, but only if

(i) Request is for notification that requested record exists, for access to requested record or for copy of requested record;

(ii) Record is not available to any person under 5 U.S.C. 552; and

(iii) Requester does not appear before an employee of USPTO for verification of identity.

(c) Any inquiry which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (b) of this section will be so addressed and marked by USPTO personnel and forwarded immediately to the Privacy Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when an inquiry so forwarded is received, the Privacy Officer shall notify the individual that his or her inquiry was improperly addressed and the date the inquiry was received at the proper address.

(d)(1) Each inquiry received shall be acted upon promptly by the Privacy Officer. Every effort will be made to respond within ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the date of receipt. If a response cannot be made within ten working days, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. The first correspondence sent by the Privacy Officer to the requester shall contain USPTO's control number assigned to the request, as well as a note that the requester should use that number in all future contacts in order to facilitate processing. USPTO shall use that control number in all subsequent correspondence.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above, the requester may ask the General Counsel to take corrective action. No failure of the Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(e) An individual shall not be required to state a reason or otherwise justify his or her inquiry.

(f) Special note should be taken of the fact that certain agencies are responsible for publishing notices of systems of records having Government-wide application to other agencies, including USPTO. The agencies known to be publishing these general notices and the types of records covered therein appear in an Appendix to this part. The provisions of this section, and particularly paragraph (a) of this section, should be followed in making inquiries with respect to such records. Such records in USPTO are subject to the provisions of this part to the extent indicated in the Appendix to this part. The exemptions, if any, determined by an agency publishing a general notice shall be invoked and applied by USPTO after consultation, as necessary, with that other agency.

§ 102.24 Procedures for making requests for records.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for access to records to USPTO. The request should be made either in person at Crystal Park Two, 2121 Crystal Drive, Suite 714, Arlington, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, Washington, DC 20231.

(b) Requests submitted by mail should include the words ''PRIVACY ACT REQUEST'' in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by USPTO personnel and forwarded immediately to the Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring time periods for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date when the request was received at the proper address.

(c) If the request follows an inquiry under § 102.23 in connection with which the individual's identity was established by USPTO, the individual need only indicate the record to which access is sought, provide the USPTO control number assigned to the request, and sign and date the request. If the request is not preceded by an inquiry under § 102.23, the procedures of this section should be followed.

(d) The requirements for identification of individuals seeking access to records are as follows:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document, preferably issued for participation in a federally sponsored program, bearing the individual's signature (for example, unemployment insurance book, employer's identification card, national credit card, and professional, craft or union membership card); and

(iii) A document bearing neither the photograph nor the signature of the individual, preferably issued for participation in a federally sponsored program (for example, Medicaid card). In the event the individual can provide no suitable documentation of identity, USPTO will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3) recited in § 102.32(a). In order to avoid any unwarranted disclosure of an individual's records, USPTO reserves the right to determine the adequacy of proof of identity offered by any individual, particularly when the request involves a sensitive record.

(2) *Not in person.* If the individual making a request does not appear in person before the Privacy Officer or other employee authorized to determine identity, a certification of a notary public or equivalent officer empowered to administer oaths must accompany the request under the circumstances prescribed in § 102.23(b)(9). The certification in or attached to the letter must be substantially in accordance with the following text:

City of
County of :ss
(Name of individual), who affixed (his) (her) signature below in my presence, came before me, a (title), in and for the aforesaid County and State, this day of , 20 , and established (his) (her) identity to my satisfaction.
My commission expires .
(Signature)

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (d)(1) or (d)(2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the

proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. For purposes of the Act, a parent or legal guardian may represent only a living individual, not a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of § 102.25(f) are satisfied.

(e) When the provisions of this subpart are alleged to impede an individual in exercising his or her right to access, USPTO will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason or otherwise justify his or her request for access to a record.

§ 102.25 Disclosure of requested records to individuals.

(a)(1) The Privacy Officer shall act promptly upon each request. Every effort will be made to respond within ten working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of the date of receipt. If a response cannot be made within ten working days due to unusual circumstances, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the request and asking for any further information that may be necessary to process the request. ''Unusual circumstances'' shall include circumstances in which

(i) A search for and collection of requested records from inactive storage, field facilities or other establishments is required;

(ii) A voluminous amount of data is involved;

(iii) Information on other individuals must be separated or expunged from the particular record; or

(iv) Consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above, the requester may ask the General Counsel to take corrective action. No failure of the Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(b) *Grant of access*—(1) *Notification*. An individual shall be granted access to a record pertaining to him or her, except where the provisions of paragraph (g)(1) of this section apply. The Privacy Officer will notify the individual of a determination to grant access, and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification;

(iv) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 102.31. In no event shall the estimated date be later than thirty calendar days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(vi) Any additional requirements needed to grant access to a specific record.

(2) *Methods of access*. The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in a location specified by the Privacy Officer during business hours;

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of USPTO or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 102.31. USPTO, on its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records is governed by the provisions of § 102.26.

(d) USPTO will supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) USPTO reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or diskette, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of USPTO be made available to the individual except under the immediate supervision of the Privacy Officer or the Privacy Officer's designee.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. ''Accompanied'' includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing. The authorization shall include the name of the other individual, a specific description of the record to which access is sought, the USPTO control number assigned to the request, the date, and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the Privacy Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) *Initial denial of access*—(1) *Grounds*. Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under § 102.33 or § 102.34, or exempt by determination of another agency publishing notice of the system of records, as described in § 102.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 102.26 pertaining to medical records temporarily have been invoked; or

(iv) The individual has unreasonably failed to comply with the procedural requirements of this part.

(2) *Notification*. The Privacy Officer shall give notice of denial of access to records to the individual in writing and shall include the following information:

(i) The Privacy Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative

consideration, including the identity and address of the responsible official. If no further administrative consideration within USPTO is available, the notice shall state that the denial is administratively final; and

(v) If stated to be administratively final within USPTO, the individual's right to judicial review provided under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* When an initial denial of a request is issued by the Privacy Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of the exemption to the records, review procedures in § 102.25(g)(3)(ii) shall apply; or

(B) If the individual challenges the exemption itself, the procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by USPTO, such petition shall be filed with the General Counsel. If the exemption was determined by another agency (as described in § 102.23(f)), USPTO will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within USPTO, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the General Counsel.

(ii) As to denial under paragraphs (g)(1)(ii) of this section, (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(i)(A) of this section) paragraph (g)(1)(i), the individual may file for review with the General Counsel, as indicated in the Privacy Officer's initial denial notification. The procedures appearing in § 102.28 shall be followed by both the individual and USPTO to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within USPTO is available because the denial is not administratively final until expiration of the time period indicated in § 102.26(a).

(h) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 102.26 Special procedures: Medical records.

(a) No response to any request for access to medical records by an individual will be issued by the Privacy Officer for a period of seven working days (i.e., excluding Saturdays, Sundays, and legal public holidays) from the date of receipt.

(b) USPTO has published as a routine use, for all systems of records containing medical records, consultations with an individual's physician or psychologist if, in the sole judgment of USPTO, disclosure could have an adverse effect upon the individual. The mandatory waiting period set forth in paragraph (a) of this section will permit exercise of this routine use in appropriate cases. USPTO will pay no cost of any such consultation.

(c) In every case of a request by an individual for access to medical records, the Privacy Officer shall:

(1) Inform the individual of the waiting period prescribed in paragraph (a) of this section;

(2) Obtain the name and address of the individual's physician and/or psychologist, if the individual consents to give them;

(3) Obtain specific, written consent for USPTO to consult the individual's physician and/or psychologist in the event that USPTO believes such consultation is advisable, if the individual consents to give such authorization;

(4) Obtain specific, written consent for USPTO to provide the medical records to the individual's physician or psychologist in the event that USPTO believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist, if the individual consents to give such authorization; and

(5) Forward the individual's medical record to USPTO's medical expert for review and a determination on whether consultation with or transmittal of the medical records to the individual's physician or psychologist is warranted. If the consultation with or transmittal of such records to the individual's physician or psychologist is determined to be warranted, USPTO's medical expert shall so consult or transmit. Whether or not such a consultation or transmittal occurs, USPTO's medical officer shall provide instruction to the Privacy Officer regarding the conditions of access by the individual to his or her medical records.

(d) If an individual refuses in writing to give the names and consents set forth in paragraphs (c)(2) through (c)(4) of this section and USPTO has determined that disclosure could have an adverse effect upon the individual, USPTO shall give the individual access to said records by means of a copy, provided without cost to the requester, sent registered mail return receipt requested.

§ 102.27 Procedures for making requests for correction or amendment.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for correction or amendment to USPTO. The request should be made either in person or by mail addressed to the Privacy Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment. The office of the Privacy Officer is open to the public between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday (excluding legal public holidays).

(b) Requests submitted by mail should include the words ''PRIVACY ACT REQUEST'' in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by USPTO personnel and forwarded immediately to the Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) Since the request, in all cases, will follow a request for access under § 102.25, the individual's identity will be established by his or her signature on the request and use of the USPTO control number assigned to the request.

(d) A request for correction or amendment should include the following:

(1) Specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which to be inserted or added; and

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials which substantiate the statement. The statement should identify the criterion of the Act being invoked, that is, whether the information in the record is unnecessary, inaccurate, irrelevant, untimely or incomplete.

§ 102.28 Review of requests for correction or amendment.

(a)(1)(i) Not later than ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) after receipt of a request to correct or amend a record, the Privacy Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in § 102.25(a). No acknowledgment will be sent if the request can be reviewed, processed, and the individual notified of the results of review (either compliance or denial) within the ten working days. Requests filed in person will be acknowledged in writing at the time submitted.

(ii) If the Privacy Officer fails to send the acknowledgment within ten working days, as provided in paragraph (a)(1)(i) of this section, the requester may ask the General Counsel to take corrective action. No failure of the Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten working days, the Privacy Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in magnetically recorded computer files); or

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this subpart; and

(D) The procedures for appeal of the denial as set forth in § 102.29, including the address of the General Counsel.

(3) The term *promptly* in this section means within thirty working days (*i.e.*, excluding Saturdays, Sundays, and legal public holidays). If the Privacy Officer cannot make the determination within thirty working days, the individual will be advised in writing of the reason therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the Privacy Officer shall be responsible for notifying all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Officer in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

(3) The relevance and necessity of the information in terms of purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of risk that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) USPTO will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended is part of the official record in a terminated judicial, quasi-judicial, or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial, or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or

(5) The individual has unreasonably failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 102.29 Appeal of initial adverse determination on correction or amendment.

(a) When a request for correction or amendment has been denied initially under § 102.28, the individual may submit a written appeal within thirty working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays) after the date of the initial denial. When an appeal is submitted by mail, the postmark is conclusive as to timeliness.

(b) An appeal should be addressed to the General Counsel, United States Patent and Trademark Office, Washington, DC 20231. An appeal should include the words ''PRIVACY APPEAL'' in capital letters at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by USPTO personnel when it is so identified and will be forwarded immediately to the General Counsel. An appeal which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time periods in this section until actual receipt by the General Counsel. In each instance when an appeal so forwarded is received, the General Counsel shall notify the individual that his or her appeal was improperly addressed and the date when the appeal was received at the proper address.

(c) The individual's appeal shall include a statement of the reasons why the initial denial is believed to be in error and USPTO's control number assigned to the request. The appeal shall be signed by the individual. The record which the individual requests be corrected or amended and all

correspondence between the Privacy Officer and the requester will be furnished by the Privacy Officer who issued the initial denial. Although the foregoing normally will comprise the entire record on appeal, the General Counsel may seek additional information necessary to assure that the final determination is fair and equitable and, in such instances, disclose the additional information to the individual to the greatest extent possible, and provide an opportunity for comment thereon.

(d) No personal appearance or hearing on appeal will be allowed.

(e) The General Counsel shall act upon the appeal and issue a final determination in writing not later than thirty working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays) from the date on which the appeal is received, except that the General Counsel may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue. The estimated date should not be later than the sixtieth working day after receipt of the appeal unless unusual circumstances, as described in § 102.25(a), are met.

(f) If the appeal is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made and a copy thereof shall be transmitted promptly both to the individual and to the Privacy Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Officer promptly shall take the actions set forth in § 102.28(a)(2)(i) and (b).

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination also shall inform the individual of the following:

(1) The right of the individual under the Act to file a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and USPTO reserves the right to reject a statement of excessive length. Such a statement shall be filed with the General Counsel. It should provide the USPTO control number assigned to the request, indicate the date of the final determination and be signed by the individual. The General Counsel shall acknowledge receipt of such statement and inform the individual of the date on which it was received.

(2) The facts that any such disagreement statement filed by the individual will be noted in the disputed record, that the purposes and uses to which the statement will be put are those applicable to the record in which it is noted, and that a copy of the statement will be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(3) The fact that USPTO will append to any such disagreement statement filed by the individual, a copy of the final determination or summary thereof which also will be provided to persons and agencies to which the disagreement statement is disclosed; and,

The right of the individual to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(h) In making the final determination, the General Counsel shall employ the criteria set forth in § 102.28(c) and shall deny an appeal only on the grounds set forth in § 102.28(e).

(i) If an appeal is partially granted and partially denied, the General Counsel shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(j) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(k) The provisions of paragraphs (g)(1) through (g)(3) of this section satisfy the requirements of 5 U.S.C. 552a(e)(3).

§ 102.30 Disclosure of record to person other than the individual to whom it pertains.

(a) USPTO may disclose a record pertaining to an individual to a person other than the individual to whom it pertains only in the following instances:

(1) Upon written request by the individual, including authorization under § 102.25(f);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and

When permitted under 5 U.S.C. 552a(b)(1) through (12), which read as follows: [1]

(i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552;

(iii) For a routine use as defined in 5 U.S.C. 552a(a)(7) and described under 5 U.S.C. 552a(e)(4)(D);

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(v) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with section 3711(e) of Title 31.

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by USPTO in certain circumstances;

(2) 5 U.S.C. 552a(d) requires disclosure of records to the individual

[1] 5 U.S.C. 552a(b)(4) has no application within USPTO.

to whom they pertain, upon request; and

(3) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by USPTO to the court.

(c) The Privacy Officer shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c) (1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Officer shall make such accounting available to any individual, insofar as it pertains to that individual, on request submitted in accordance with § 102.24. The Privacy Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

§ 102.31 Fees.

The only fees to be charged to or collected from an individual under the provisions of this part are for duplication of records at the request of the individual. The Privacy Officer shall charge fees for duplication of records under the Act in the same way in which they charge duplication fees under § 102.11, except as provided in this section.

(a) No fees shall be charged or collected for the following: Search for and retrieval of the records; review of the records; copying at the initiative of USPTO without a request from the individual; transportation of records and personnel; and first-class postage.

(b) It is the policy of USPTO to provide an individual with one copy of each record corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment.

(c) As required by the United States Office of Personnel Management in its published regulations implementing the Act, USPTO will charge no fee for a single copy of a personnel record covered by that agency's Government-wide published notice of systems of records.

§ 102.32 Penalties.

(a) The Act provides, in pertinent part: Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000. (5 U.S.C. 552a(i)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 102.33 General exemptions.

(a) Individuals may not have access to records maintained by USPTO but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, USPTO will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The general exemption determined to be necessary and proper with respect to systems of records maintained by USPTO, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, is as follows: *Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT.–12.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functions of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

§ 102.34 Specific exemptions.

(a)(1) Some systems of records under the Act which are maintained by USPTO contain, from time-to-time, material subject to the exemption appearing at 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by USPTO which are within this exemption are: COMMERCE/PAT–TM–6, COMMERCE/PAT–TM–7, COMMERCE/PAT–TM–8, COMMERCE/PAT–TM–9.

(2) USPTO hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) to protect materials required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by USPTO, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 102.33(b)(3) is held to be invalid;

(B) Investigative Records—Persons Within the Investigative Jurisdiction of USPTO—COMMERCE/DEPT–13;

(C) Litigation, Claims and Administrative Proceeding Records—COMMERCE/DEPT–14;

(D) Attorneys and Agents Registered to Practice Before the Office—COMMERCE/PAT–TM–1

(E) Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents—COMMERCE/PAT–TM–2; and

(F) Non-Registered Persons Rendering Assistance to Patent Applicants—COMMERCE/PAT–TM–5.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel. Special note is taken of the fact that the proviso clause in this exemption imports due process and procedural protections for the individual. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(2)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the act from which

exempted, and the reasons therefor are as follows:

(A) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 102.33(b)(3) is held to be invalid;

(B) Investigative Records—Persons Within the Investigative Jurisdiction of USPTO—COMMERCE/DEPT–13; and

(C) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(c) At the present time, USPTO claims no exemption under 5 U.S.C. 552a(k) (3), (4), (6) and (7).

Appendix to Part 102—Systems of Records Noticed by Other Federal Agencies [1] and Applicable to USPTO Records and Applicability of This Part Thereto

Category of records	Other Federal agency
Federal Personnel Records.	Office of Personnel Management.[2]
Federal Employee Compensation Act Program.	Department of Labor.[3]
Equal Employment Opportunity Appeal Complaints.	Equal Employment Opportunity Commission.[4]
Formal Complaints/Appeals of Adverse Personnel Actions.	Merit Systems Protection Board.[5]

[1] Other than systems of records noticed by the Department of Commerce. Where the system of records applies only to USPTO, these regulations apply. Where the system of records applies generally to components of the Department of Commerce, the regulations of that department attach at the point of any denial for access or for correction or amendment.

[2] The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.

[3] The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that department attach at the point of any denial for access or for correction or amendment.

[4] The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.

[5] The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

Dated: June 29, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–17031 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG28

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Zayante Band-Winged Grasshopper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*) under the Endangered Species Act of 1973, as amended (Act). We propose designation of critical habitat within an approximately 4,230-hectare (10,560-acre) area occupied by the Zayante band-winged grasshopper in Santa Cruz County, California.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary elements of critical habitat for the Zayante band-winged grasshopper are those habitat components that are essential for the primary physical and biological needs of the species. These needs include: food, water, sunlight, air, minerals and other nutritional or physiological needs; cover or shelter; sites for breeding and reproduction and dispersal; protection from disturbance; and habitat that is representative of the historical geographic and ecological distribution of the Zayante band-winged grasshopper.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until September 5, 2000. Public hearing requests must be received by August 21, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may hand-deliver written comments to our Ventura Office, 2493 Portola Road, Suite B, Ventura, California.

3. You may send comments by electronic mail (e-mail) to fw1grasshopper@r1.fws.gov.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

The Zayante band-winged grasshopper (*Trimerotropis infantilis*), Order Orthoptera and Family Acrididae, was first described from near Mount Hermon in the Santa Cruz Mountains, Santa Cruz County, California, in 1984 (Rentz and Weissman 1984). The body and forewings of the Zayante band-winged grasshopper are pale gray to light brown with dark cross-bands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band. The hind tibiae (lower legs) are blue, and the eyes have bands around them. Males range in length from 13.7 to 17.2 millimeters (mm) (0.54

to 0.68 inches (in.)); females are larger, ranging in length from 19.7 to 21.6 mm (0.78 to 0.85 in.) (Otte 1984; Rentz and Weissman 1984). The Zayante band-winged grasshopper is most similar in appearance to *T. occulans* and *T. koebelei*; neither of these species is known from the Santa Cruz Mountains (Otte 1984; Rentz and Weissman 1984). *Trimerotropis thalassica* and *T. pallidipennis pallidipennis* have been observed in the vicinity of Zayante band-winged grasshopper, but are morphologically distinct from it and appear to prefer different microhabitats (Rentz and Weissman 1984; Arnold 1999a,b).

The flight season for adult Zayante band-winged grasshopper extends from late May through October with peak activity during July and August (White, *in litt.* 1993; Morgan, *in litt.* 1994; Arnold 1999a,b). Specimens have been collected as late as November 4 (Arnold 1999a). When flushed, individuals generally fly 1 to 2 meters (m) (3 to 7 feet (ft)), producing a buzzing sound while in flight (Rentz and Weissman 1984). Band-winged grasshoppers often alight on bare ground, and are conspicuous in flight because of the color of the hind wings and the buzzing sound made by the wings (Borror *et al.* 1976). No additional information on the life cycle of this species is available.

The Zayante band-winged grasshopper is known only from Santa Cruz County, California. The species was described in 1984 from specimens collected in 1977 on sparsely vegetated sandy soil above the Olympia Sand Quarry. Between 1989 and 1994, Zayante band-winged grasshoppers were found at 10 of 39 sites sampled during two independent surveys near the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley, California (Hovore 1996; USFWS 1998).

Little is known of the historical distribution of the species. A review of museum specimens yielded Zayante band-winged grasshoppers from ''Santa Cruz Mountains, no date'', ''Alma, 1928'', ''Felton, 1959'', and ''Santa Cruz, 1941'' (Rentz and Weissman 1984). No subsequent collections have been recorded that substantiate the existence of a population in the vicinity of Alma. Furthermore, the town of Alma is currently beneath a reservoir, and the cited specimens cannot be located in the listed depository for verification (D. Weissman, California Academy of Sciences, pers. comm. 1994, 2000). Therefore, because no specific location or habitat descriptions accompanied these historic specimens, they were not considered in our assessment of the current range and status of the species.

The Zayante band-winged grasshopper occurs in association with the Zayante soil series (USDA Soil Conservation Service 1980). The Zayante soils in the vicinity of the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley are dominated by maritime coast range ponderosa pine (*Pinus ponderosa*) forest and northern maritime chaparral (Griffin 1964; Holland 1986). The distributions of these two plant communities overlap to form a complex and intergrading mosaic of communities variously referred to as ponderosa sand parkland, ponderosa pine sand hills, and silver-leafed manzanita (*Arctostaphylos silvicola*) mixed chaparral. These communities are collectively referred to as ''Zayante sand hills habitat'' and harbor a diversity of rare and endemic plant species (Thomas 1961; Griffin 1964; Morgan 1983). A unique habitat within the Zayante sand hills is sand parkland, characterized by sparsely vegetated, sandstone-dominated ridges, and saddles that support scattered ponderosa pines and a wide array of annual and perennial herbs and grasses.

The role of landscape-level processes, including hydrology, seed dispersal, succession, fire, and other disturbances, in forming Zayante sand hills habitats is poorly understood. Historically, the Zayante sand hills included a continually changing pattern of habitat patches, each with specific disturbance histories, sizes, and species compositions. At any one time, patches of all possible stages of succession may be present (Lee 1994). Populations of the Zayante band-winged grasshopper evolved within this dynamic landscape and most likely are adapted to disturbance and change.

The habitat of the Zayante band-winged grasshopper was originally described as ''sandy substrate sparsely covered with *Lotus* and grasses at the base of pines'' (Rentz and Weissman 1984). All of the locations where grasshoppers were found during surveys completed between 1989 and 1994 were on Zayante soils. The habitat at these sites was consistently described as a sparsely vegetated sandy substrate or sand parkland (White, *in litt.* 1993; Morgan, *in litt.* 1994). In 1997, at the time of the listing of this species, all of its known locations occurred within 7 discrete areas of sand parkland habitat as characterized by Lee (1994). Recent studies indicated that the Zayante band-winged grasshopper occurs primarily in early successional sand parkland with widely scattered tree and shrub cover, extensive areas of bare or sparsely vegetated ground, loose sand, and relatively flat relief (Hovore 1996; Arnold 1999a, b). However, Zayante band-winged grasshoppers have also recently been observed in areas with a well-developed ground cover and in areas with sparse chaparral mixed with patches of grasses and forbs (Hovore 1996; Arnold 1999a, b), indicating that Zayante band-winged grasshoppers are not restricted solely to sand parkland.

The primary threat to the Zayante band-winged grasshopper is loss of habitat. Historically, approximately 2,533 ha (6,265 ac) of Zayante sand hills habitat occurred in Santa Cruz County. Over 40 percent of the Zayante sand hills habitat, and 60 percent of the sand parkland within that habitat, is estimated to have been lost or altered due to human activities. These activities include: sand mining, urban development, recreational activities, and agriculture (Marangio and Morgan 1987; Lee 1994; R. Morgan, pers. comm. 1992). Approximately 200 to 240 hectares (ha) (500 to 600 acres (ac)) of sand parkland existed historically (Marangio and Morgan 1987). By 1986, only 100 ha (250 ac) of sand parkland remained intact (Marangio and Morgan 1987). By 1992, sand parkland was reportedly reduced to only 40 ha (100 ac) (Morgan, pers. comm. 1992). A more recent assessment revised that estimate up to 78 ha (193 ac), largely because of identification and inclusion of additional, lower-quality sand parkland (Lee 1994).

The disruption of natural landscape-level processes may also be resulting in shifts in plant communities, which has reduced the extent and quality of habitat available for the Zayante band-winged grasshopper. For example, active suppression of fire has resulted in the encroachment of mixed evergreen forest into ponderosa pine forest (Marangio 1985). Increase shading from the mixed evergreen forest appears to restrict the use of areas by the Zayante band-winged grasshopper and results in lower population numbers (Sculley, USFWS, pers. observation 1999). Historically, fires would have burned in this area and resulted in areas with more exposure to sunlight. In addition, nonnative plant species, including Portuguese broom (*Cystisus striatus*) and sea fig (*Carpobrotus chilensis*), are out-competing native species and encroaching on sites occupied by the Zayante band-winged grasshopper (Rigney 1999). Pesticides and over-collection are also recognized as potential threats to the Zayante band-winged grasshopper (USFWS 1998).

Previous Federal Action

On July 16, 1992, Dr. David Weissman, of the California Academy of Sciences, petitioned us to list the Zayante band-winged grasshopper as an endangered species. During our status review of the Zayante band-winged grasshopper, we examined the available literature and data on the species' life history, ecology, locality records, and range. Sources of information on the status of and threats to the Zayante band-winged grasshopper included reports supplied by proponents of the listing, plans supplied by reviewing agencies for development projects, and published and unpublished data from scientists with expertise on the species and its habitat needs.

On May 10, 1994, we published a proposed rule in the **Federal Register** (59 FR 24112) to list the Zayante band-winged grasshopper and two other insect species as endangered. The proposed rule constituted the final finding for the petitioned actions for the Zayante band-winged grasshopper in accordance with section 4(b)(3)(B)(ii) of the Act. Publication of the proposed rule opened a 60-day public comment period through July 11, 1994, to allow submission of new and additional information on the species and written comments from the public. We held a public hearing on July 18, 1994, in Santa Cruz, California, that included presentations of oral testimony and written comments. We published a notice on September 1, 1994 (59 FR 45254) reopening the public comment period through October 31, 1994, to allow submission of additional comments and information concerning the proposed rule.

Using information received during the cited public comment periods, we published a final rule on January 24, 1997 (62 FR 3616), determining the Zayante band-winged grasshopper and Mount Hermon June beetle (*Polyphylla barbata*), both occurring within the Zayante sand hills habitat, to be endangered species. At the time of listing, we concluded that designation of critical habitat for the Zayante band-winged grasshopper was not prudent because such designation would not benefit the species since all known populations of the species occur on non-Federal lands where Federal involvement in land-use activities would not generally occur. On September 30, 1997, we made a draft recovery plan for the Zayante band-winged grasshopper, Mount Hermon June beetle, and three plants (Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*), Ben Lomond wallflower (*Erysimum teretifolium*), and Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*)) available for public comment (62 FR 51126). We published the final recovery plan in September 1998.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District Court of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior, for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper, the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity* v. *U.S. Fish and Wildlife,* CIV 99–1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit according to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, ''jeopardize the continued existence'' (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation and management plans, and through section 7 consultations and section 10 permits.

This critical habitat designation identifies an area that has features that are essential to the conservation of the Zayante band-winged grasshopper and that may require special management considerations or protection. The proposed critical habitat contains a mosaic of habitats that provide breeding, foraging, sheltering, and living spaces for the grasshopper.

Methods

In determining areas that are essential to conserve the Zayante band-winged grasshopper, we included data from research and surveys published in peer-reviewed articles and unpublished reports, data submitted by biologists holding section 10(a)(1)(A) recovery permits, data from monitoring reports required for incidental take permits under section 10(a)(1)(B) of the Act, soil maps, and the recovery criteria outlined in the recovery plan (USFWS 1998). The area we are proposing to designate as critical habitat currently provides those habitat components essential for the primary biological needs of the Zayante band-winged grasshopper, as defined by the primary constituent elements, and maintains the ecosystem functions.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, and other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; protection from disturbance; and habitats that are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Zayante band-winged grasshopper are those physical and biological features that provide conditions that are essential for the primary biological needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are: (a) The presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered tree and shrub cover, bare or sparsely vegetated ground, and loose sand (Arnold 1999a, b). Zayante sand hills habitat is often characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral as described by Marangio (1985) and Lee (1994). Plant species that may occur within the boundaries include, but are not limited to: ponderosa pine, silver-leafed manzanita, California lilac (*Ceonothus* sp.), *Adenostoma* sp., yerba santa (*Eriodictyon* sp.), sandwort (*Minuartia* sp.), pussypaws (*Calyptridium umbellatum*), monkeyflower (*Mimulus rattanii*), miniature lupine (*Lupinis bicolor*), gilia (*Gilia tenuiflora*), California aster (*Lessingia filaginifolia*), Ben Lomond buckwheat (*Eriogonum nudum* ssp. *decurrens*), Ben Lomond wallflower, and Ben Lomond spineflower (Lee 1984; USFWS 1998; McGraw *in litt.* 1999). Of these plant species, Ben Lomond wallflower and Ben Lomond spineflower are also federally endangered and are addressed within the same recovery plan as the Zayante band-winged grasshopper and the Mount Hermon June beetle.

Areas where surveys for Zayante band-winged grasshopper have not been conducted, but are adjacent or contiguous with known occupied habitat, are also essential to the species. Not only is there a potential that these areas contain grasshoppers, the areas are necessary because they: (1) Provide and maintain the ecosystem functions, including, but not limited to, hydrologic processes, succession, seed dispersal, and natural disturbance regimes, necessary to support populations of the Zayante band-winged grasshopper; (2) provide a means of connecting occupied areas so that the deleterious effects of isolation are minimized; and (3) increase the area available to the species in case of localized, random catastrophic events, thus decreasing the potential for extirpation of populations. As successional changes occur over time, these adjacent areas will also provide the grasshopper with suitable habitat.

Criteria Used To Identify Critical Habitat

In an effort to identify areas essential for the conservation of the species, we evaluated information on Zayante soils, plant communities associated with these soils, and the distribution, life history, and habitat requirements of the Zayante band-winged grasshopper. Using a geographic information system (GIS), maps of the Zayante soil series were generated. We determined that published maps of the Zayante soil series were imprecise for our needs and did not always account for gradients between soil types. Therefore, a 60-m (200-ft) zone was mapped around the soils to account for possible inaccuracies in the current maps. We arrived at a 60-m zone based on recommendations by the Natural Resources Conservation Service (NRCS), the agency familiar with the techniques used to map soils and the distribution of Zayante soils (R. Casale, NRCS, USDA, pers comm. 2000).

Next, the known locations of the Zayante band-winged grasshopper were overlaid on the map of Zayante soil series. Areas considered occupied by the grasshopper, and included within the boundaries of critical habitat, are areas where grasshoppers have been located and areas with Zayante soils that were adjacent to or contiguous with known locations of the grasshopper. These contiguous and adjacent areas were included in order to create patches large enough in size to maintain ecosystem functions and to connect habitat patches into a larger area so that populations do not become isolated and localized random or catastrophic events do not cause smaller populations to be extirpated. Over time, as succession occurs and vegetation encroaches on areas currently inhabited by the Zayante band-winged grasshopper, populations may disperse into these adjacent patches of habitat.

We considered sites identified in the recovery plan as important for the recovery of the Zayante band-winged grasshopper. While recovery units were not specifically described, the recovery plan recommends protecting the 7 discrete areas of sand parkland (Lee 1994), containing the 10 sites occupied by the species, as one criterion for down-listing to threatened status. These seven areas were included within the boundaries of the proposed critical habitat. Additional areas were also included that have the constituent elements for the species, because new information about the range, distribution, and habitat requirements of the Zayante band-winged grasshopper indicates that the species occupies areas that are outside of these seven discrete areas and that are not considered sand parkland. Furthermore, sand hills habitat adjacent and contiguous with these seven areas is essential to maintain landscape level processes.

We determined that approximately 3,620 ha (8,700 ac) of Zayante soils are scattered throughout Santa Cruz County. The soils occur from west of the community of Bonny Doon east to Corralitos, and from the northern portion of Wilder Ranch State Park

north to the communities of Boulder Creek, Lompico, and Zayante. Several patches are also located near the City of Scotts Valley. The largest cluster of these soils occurs between Highways 9 and 17, surrounding the communities of Scotts Valley, Zayante, Lompico, Ben Lomond, Felton, and Mount Hermon. Surveyors of the Zayante band-winged grasshopper have focused their efforts in this region, and, at present, all of the known locations of this species are from this region. Zayante soils located in the eastern portion of Santa Cruz County in the vicinity of Corralitos do not support vegetation characteristic of the Zayante sand hills habitat.

We excluded from the proposed critical habitat areas that have not been surveyed for the Zayante band-winged grasshopper and that are not part of a continuous corridor of Zayante soils that include known localities of the grasshopper. Although these areas have been excluded, we recognize that they may still include habitat presently or historically occupied by the Zayante band-winged grasshopper. In addition, these unsurveyed areas may include habitat appropriate for introduction of Zayante band-winged grasshoppers in the future. If we determine that areas outside of the boundaries of the designated critical habitat are important for the conservation of this species, we may propose these additional areas as critical habitat in the future.

We defined the boundaries for the proposed critical habitat using township, range, and section numbers from the public land survey. We propose to designate approximately 4,230 ha (10,560 ac) of land as critical habitat for the Zayante band-winged grasshopper. Of this area, 1,600 ha (3,950 ac) are lands with Zayante soils and sand hills habitat. The remaining 2,630 ha (6,610 ac) of critical habitat are areas that either support the processes necessary to maintain ecosystem functions and required habitat conditions or were included due to insufficient mapping detail (as described below).

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other similar lands. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas, do not contain one or more of the primary constituent elements and do not support the processes necessary to maintain the required ecosystem functions. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

We also considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a Habitat Conservation Plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal lands that are covered by an existing operative HCP and executed implementation agreement (IA) for the Zayante band-winged grasshopper under section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and are therefore not proposed for inclusion in critical habitat since they do not meet the definition of critical habitat as defined by section 3(5) of the Act.

We expect that critical habitat may be used as a tool to help identify areas within the range of the Zayante band-winged grasshopper that are essential for the conservation of the species. Critical habitat designation is not intended to discourage the development of HCPs for such areas on non-Federal lands. To the contrary, we consider HCPs to be one of the most important methods through which non-Federal landowners can help conserve listed species while resolving potential land-use conflicts. We provide technical assistance and work closely with applicants throughout the development of HCPs to help identify special management considerations for listed species. We intend that HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat within Santa Cruz County by land ownership is shown in Table 1. The proposed critical habitat includes Zayante band-winged grasshopper habitat throughout the existing known range of the species. Land proposed for critical habitat is under private, local government, and State ownership, and is described within one unit. A brief description of this unit is presented below.

TABLE 1.—APPROXIMATE AREA WITHIN SANTA CRUZ COUNTY ENCOMPASSING PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

County	Federal Land	Local/State Land	Private Land	Total [1]
Santa Cruz	N/A	250 ha (610 ac)	3,980 ha (9,950 ac)	4,230 ha (10,560 ac)

[1] Area estimates reflect critical habitat unit boundaries, not the extent of the primary constituent elements within the unit.

Proposed Critical Habitat Unit

The Proposed Critical Habitat Unit (Unit) encompasses approximately 4,230 ha (10,560 ac) between Highways 9 and 17. Most of the lands designated as critical occur from the southeastern portion of Henry Cowell Redwoods State Park west to the City of Scotts Valley and north to the communities of Ben Lomond, Lompico, and Zayante. A small area proposed for critical habitat is located east of Zayante in the vicinity of Weston Road.

Public lands that occur in this Unit include approximately 130 ha (310 ac) in Henry Cowell Redwoods State Park, owned and managed by the California Department of Parks and Recreation, and all of Quail Hollow Park (120 ha (300 ac)), jointly owned and managed by the County of Santa Cruz and the California Department of Fish and Game. Areas covered in the Revised Habitat Conservation Plan for Quail Hollow Quarry (Graniterock 1998) and the Habitat Conservation Plan for Hanson Aggregates' Felton Plant (Hanson Aggregates 1999) have been excluded from designation as critical habitat. See section ''Relationship to Habitat Conservation Plans'' for further discussion of these plans.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or

adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species and avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on private or State lands requiring a permit from a Federal agency or some other Federal action, including funding (*e.g.,* Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Zayante band-winged grasshopper is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Excavating, compacting, grading, or discing of soil, and vegetation removal;

(2) Violations of grading, mining, or construction permits within critical habitat;

(3) Recreational activities that crush and remove vegetation or compact soils, including off-trail hiking, horse riding, and off-road motorized and non-motorized vehicular use in critical habitat;

(4) Application of pesticides within critical habitat beyond the boundaries of maintained lawns and gardens or in violation of label restrictions;

(5) Activities that could lead to the introduction of exotic species into critical habitat; and

(6) Activities that cause erosion of soils in critical habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying critical habitat of the listed species. Actions likely to jeopardize the continued existence of a species are those that would appreciably reduce the likelihood of the species survival and recovery. Actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, the ramifications of its designation are few or none. Designation of critical habitat for the Zayante band-winged grasshopper is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. We believe that designation of critical habitat would have little effect on Federal agencies because no proposed critical habitat occurs on Federal lands, and we are not aware of any federally funded or federally permitted actions planned to take place in critical habitat.

Relationship to Habitat Conservation Plans

Two HCPs have been completed within the range of the Zayante band-winged grasshopper. Both HCPs are for sand mining operations and both provide take authorization for the Zayante band-winged grasshopper. The Revised Habitat Conservation Plan for the Quail Hollow Quarry owned and operated by Granite Rock Company provides for the permanent protection and management of three conservation areas known to be occupied by the Zayante band-winged grasshopper and that total 26.3 ha (65.8 ac) in area (Granite Rock 1998). The Habitat Conservation Plan for the Felton Plant owned and operated by Hanson Aggregates provides for the permanent protection and management of two habitat set-asides known to be occupied by the Zayante band-winged grasshopper and that total 8.5 ha (21.3 ac) in area (Hanson Aggregates 1999). In addition, both HCPs provide minimization measures to reduce the potential impacts of the sand-mining operations on the Zayante band-winged grasshopper. Because the habitat for the Zayante band-winged grasshopper preserved in the conservation areas is managed for the benefit of this species, there are no additional management considerations or protections required for those lands covered under the HCP. Therefore, we have determined that non-Federal lands within approved HCP planning areas for the Zayante band-winged grasshopper do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

Habitat conservation plans that may be developed in the future will be intended to provide for protection and management of habitat areas essential for the conservation of the Zayante band-winged grasshopper, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the grasshopper. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.,* cities and counties) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the Zayante band-winged grasshopper should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude such areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will reopen the comment period 30 days at that time to accept comments on the economic analysis or further comments on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

(2) Specific information on the amount and distribution of habitat for the Zayante band-winged grasshopper, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, especially, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the Zayante band-winged grasshopper, such as those derived from non-consumptive uses (*e.g.,* hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs).

In this proposed rule, we do not propose to designate critical habitat on non-Federal lands within the boundaries of an existing approved HCP with an executed IA for the Zayante band-winged grasshopper approved under section 10(a)(1)(B) of the Act on or before the date of the final rule designating critical habitat for the grasshopper. We believe that, since an existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the Zayante band-winged grasshopper, such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach, and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat; and

(2) Designate reserves, preserves, and other conservation lands identified by approved HCPs, on the premise that they encompass areas that are essential to conservation of the species within the HCP area and that will continue to

require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the Zayante band-winged grasshopper is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the Zayante band-winged grasshopper in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Zayante band-winged grasshopper:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the Zayante band-winged grasshopper we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

If comments are submitted electronically, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include Attn: RIN 1018-AG28 and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805/644–1766.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or

other units of government. The Zayante band-winged grasshopper was listed as an endangered species in 1997. In fiscal years 1997 through 1999, we received no requests for consultation from other Federal agencies to ensure that their actions would not jeopardize the continued existence of the Zayante band-winged grasshopper.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (Table 2). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning take of the species).

TABLE 2.—IMPACTS OF ZAYANTE BAND-WINGED GRASSHOPPER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional Activities Potentially Affected by Critical Habitat Designation [1]
Federal Activities Potentially Affected [2].	None (there is no Federal land within the range of the species)	None.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy Zayante band-winged grasshopper habitat by mechanical, chemical, or other means (e.g., grading, overgrazing, construction, road building, herbicide application, recreational use) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	None.

[1] These columns represent activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Zayante band-winged grasshopper since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in the proposed critical habitat. However, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of critical habitat. We expect little effect given that there are no Federal lands designated as critical habitat, and no Federal nexuses for lands designated as critical habitat have been identified at this time.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of critical habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we propose designation of property owned by State and local governments and private property and identify the types of Federal actions or authorized activities that are of potential concern. If these activities are sponsored by Federal agencies, they may be carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of critical habitat. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits

or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Zayante band-winged grasshopper. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the Zayante band-winged grasshopper.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. We will continue to coordinate any future designation of critical habitat for the Zayante band-winged grasshopper with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the Zayante band-winged grasshopper imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act, and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Zayante band-winged grasshopper.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. 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 OMB Control Number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis.

We have determined that no Tribal lands are essential for the conservation of the Zayante band-winged grasshopper because they do not support populations or suitable habitat. Therefore, we are not proposing to designate critical habitat for the Zayante band-winged grasshopper on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is Colleen Sculley, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ''grasshopper, Zayante band-winged'' under ''Insects'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* *	*	*	*	*	*	*	
INSECTS							
* *	*	*	*	*	*	*	
Grasshopper, Zayante band-winged	*Trimerotropis infantilis*	U.S.A. (CA)	NA	E	605	17.95(i)	NA
* *	*	*	*	*	*	*	

3. Amend § 17.95(i) by adding critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*), in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

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ZAYANTE BAND-WINGED GRASSHOPPER (*Trimerotropis infantilis*)

1. The unit of critical habitat is depicted for Santa Cruz County, California, on the map below.

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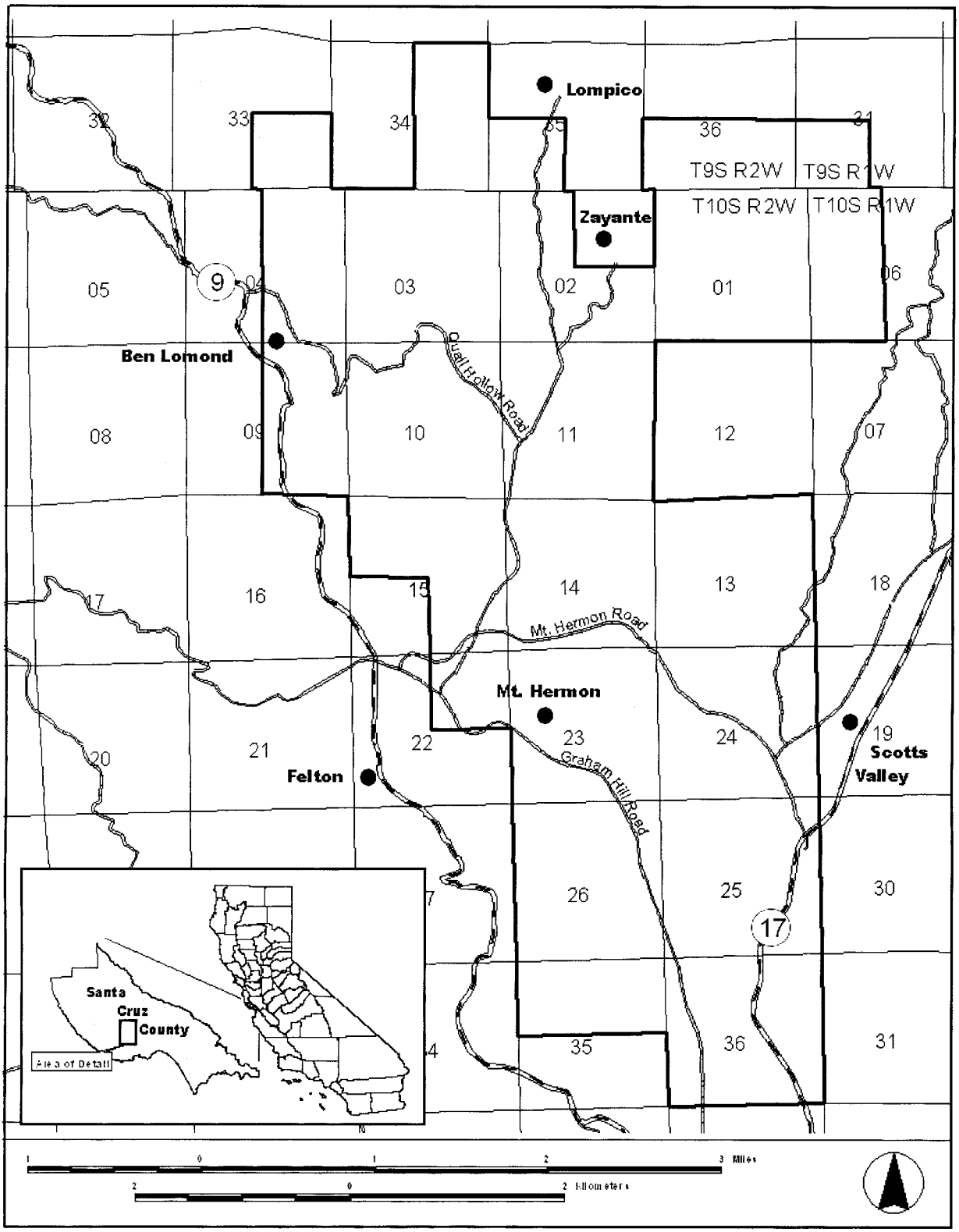

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2. Within this area, the primary constituent elements for the Zayante band-winged grasshopper are those physical and biological elements that provide conditions that are essential for the primary biological needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are: (a) the presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered tree and shrub cover, bare or sparsely vegetated ground, and loose sand. Zayante sand hills habitat is characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral. Plant species that may occur within the boundaries include, but are not limited to: ponderosa pine (*Pinus ponderosa*), silver-leafed manzanita (*Arctostaphylos silvicola*), California lilac (*Ceonothus sp.*), Adenostoma sp., yerba santa (*Eriodictyon sp.*), sandwort (*Minuartia sp.*), pussypaws (*Calyptridium umbellatum*), Ben Lomond spineflower (*Erysimum teretifolium*), monkeyflower (*Mimulus rattanii*), miniature lupine (*Lupinis bicolor*), gilia (*Gilia tenuiflora*), California aster (*Lessingia filaginifolia*), Ben Lomond buckwheat (*Eriogonum nudum ssp. decurrens*), and Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*).

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aquaducts, railroads, airports, paved areas, and similar features and structures.

Santa Cruz County, California. Boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Land Grants of Zayanta, San Augustin, La Carbonera, and Canada Del Rincon En El Rio San Lorenzo De Santa Cruz, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by the Service from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian. The following lands located within Santa Cruz County are being proposed for critical habitat: T.9 S., R.1 W., SE¼ sec. 31; T.9 S., R.2 W., SE¼ sec. 33, E½ sec. 34, SW¼ sec 35, S½ sec 3; T.10 S., R1 W., W½ sec. 6; T.10 S., R.2 W., sec. 1, S½ NW¼ sec. 2, sec. 3, W½ sec. 4, W½ sec 9, sec. 10, sec. 11, sec. 13, sec. 14, N½ SE¼ sec. 15, NE¼ sec. 22, secs. 23–26, N½ sec. 35, sec 36, excluding all lands covered under the Revised Habitat Conservation Plan for the Quail Hollow Quarry and the Habitat Conservation Plan for the Hanson Aggregates' Felton Plant.

Dated: June 28, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–17259 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 131
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 00–060–1]

Declaration of Emergency Because of Glassy-Winged Sharpshooter

The glassy-winged sharpshooter (*Homalodisca coagulata*), a primary vector of the bacterium that causes Pierce's disease, is becoming established in areas of the State of California.

Pierce's disease, caused by the bacterium *Xylella fastidiosa*, is an extremely serious plant disease that affects grapes. Infection interferes with the transport of water through grape vines, resulting in severely reduced fruit production and eventually the death of the vine. There is no treatment for the disease; once a grapevine has contracted Pierce's disease, the vine cannot be saved. Pierce's disease is spread over distances by the highly mobile glassy-winged sharpshooter.

Pierce's disease is endemic to States bordering the Gulf of Mexico, as well as mid-Atlantic States in the southeastern United States. Glassy-winged sharpshooter is also indigenous to many of these areas. However, native grapevines in these areas of the southeastern United States appear to be tolerant of Pierce's disease, which limits the effect the disease has on grape production there. Therefore, no regulatory measures have been taken, or will be taken, to control the spread of Pierce's disease in the southeastern United States.

Infestations of Pierce's disease, combined with the recent introduction of glassy-winged sharpshooter, in limited areas of California are presenting a serious threat to grape vineyards in that State. Production grape vines in California have no tolerance for Pierce's disease. Therefore, if glassy-winged sharpshooter is allowed to spread from recently infested areas in California, the overall crop loss and effects on quality as a result of the spread of Pierce's disease could be significant. The estimated annual value of California's grape industry is at least $6 billion. If steps are not taken to eradicate glassy-winged sharpshooter in the recently infested areas in California where it is now known to be present, there is every possibility the disease will eventually spread to other areas of the State, and to other areas of the United States, where susceptible grapes are produced. This would result in substantial losses to producers of grapes, and to those industries that transport, process, or otherwise utilize this fruit. Consumers would also be affected by a reduction in the quantity and quality of grapes available, and by increased prices.

Five distinct strategies have been identified for responding to the glassy-winged sharpshooter in California: (1) A State regulatory program to inspect nursery stock for the presence of glassy-winged sharpshooter before the nursery stock moves from the areas in California where the pest is now known to be present to other areas in the State; (2) a State-wide survey program adequate to detect any additional infestations of glassy-winged sharpshooter that may be present; (3) control operations to establish multi-county pest management areas and apply appropriate insecticide treatments; (4) a research program to identify alternative methods of control and eradication, such as biological controls; and (5) an educational campaign to help the public identify the glassy-winged sharpshooter and the symptoms of Pierce's disease. Initial action was taken by the California Department of Food and Agriculture (CDFA). The Animal and Plant Health Inspection Service, U.S. Department of Agriculture, is working on the detection of glassy-winged sharpshooter in California and on research into new biological control technologies aimed at preventing the spread of Pierce's disease.

Additional funds are needed to conduct the control and eradication programs deemed necessary to protect grape production areas in California.

Therefore, in accordance with section 442, title IV, of the Agricultural Risk Protection Act of 2000 (Public Law 106–224), I declare that there is an emergency that threatens the grape crop of California, and I authorize the transfer and use of such sums as may be necessary from appropriations or other funds available to agencies or corporations of the United States Department of Agriculture for the conduct of a program in California to control and prevent the spread of glassy-winged sharpshooter and Pierce's disease in California and to other noninfested areas of the United States.

Effective Date: This declaration of emergency shall become effective June 23, 2000.

Dan Glickman,
Secretary of Agriculture.

[FR Doc. 00–17151 Filed 7–06–00; 8:45 am]
BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Revenue Assurance

ACTION: Notice of availability.

SUMMARY: In accordance with section 508(h) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) have approved for reinsurance and subsidy the insurance of canola/rapeseed, corn, feed barley, soybeans, sunflowers, spring wheat, and winter wheat in select states and counties under the Revenue Assurance (RA) plan of insurance for the 2001 crop year. This notice is intended to inform eligible producers and the private insurance industry of revisions to the Revenue Assurance Insurance Policy Basic Provisions, deletion of the Revenue Assurance Spring Wheat Crop Provisions, and addition of the Revenue Assurance Wheat Crop Provisions and Revenue Assurance Optional Endorsement Winter Wheat Coverage Endorsement beginning with the 2001 crop year.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Dr., Kansas City, Missouri 64133, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 508(h) of the Act allows for the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of

producers are adequately protected and that premiums charged to producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act.

In accordance with Section 508(h) of the Act, the Board approved a program of insurance known as ''Revenue Assurance'' (RA) submitted by Farm Bureau Mutual Insurance Company of Iowa as a pilot project covering corn and soybeans beginning with the 1997 crop year.

The RA program was approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses in an amount authorized under section 508(e) of the Act. RA was designed to protect a producer's revenue whenever low prices or low yields, or a combination of both, caused the harvest revenue to fall below a guaranteed level. The producer selected a per-acre revenue guarantee that could not be less than 65 percent, or more than 75 percent, of the expected revenue for a unit. The policy indemnity was finalized when the county harvest price and the producer's actual production were determined. This determination typically occurred in December for corn, and in November for soybeans. The crop prices were established on a county basis.

The RA policy provides coverage for basic units, optional units, enterprise units, and whole-farm units.

For the 1999 crop year, at the request of American Farm Bureau Insurance Services, Inc., the RA program for corn and soybeans was expanded into Illinois, South Dakota, Minnesota, and North Dakota, and spring wheat was approved as a new crop for North Dakota. Producers could select a coverage level percentage up to 80 percent for whole-farm units, and a fall harvest price option that used the greater of the projected harvest price or the fall harvest price in determining the revenue guarantee. The RA program was changed to use the Chicago Board of Trade futures for crop prices rather than using the county crop prices. The Chicago Board of Trade futures and the actual production history were the basis for determining the revenue guarantee and RA premium rates.

For the 2000 crop year, the RA program was expanded for corn and soybeans in Indiana; for spring wheat in Idaho, Minnesota, and South Dakota; for feed barley and canola/rapeseed in Idaho and North Dakota; and for sunflowers in North Dakota. The maximum coverage level for enterprise and whole-farm units was also increased to 85 percent.

American Farm Bureau Insurance Services, Inc., has requested winter wheat coverage in specific states and in counties that currently have MPCI winter wheat coverage beginning with the 2001 crop year, therefore, winter wheat coverage has been added to the wheat policy and a winter wheat coverage endorsement has also been added. Changes for clarification have been added to the Revenue Assurance Insurance Policy Basic Provisions.

Changes in the administrative fees producers must pay, allowing producers to replace low actual production history yields (APH) yields with adjusted transitional yields (T-yields), and changes in the amount of subsidy provided to reduce producers' premium costs have been added to the Revenue Assurance Insurance Policy Basic Provisions as mandated by the Agricultural Risk Protection Act of 2000.

Accordingly, FCIC herewith gives notice of the above stated changes for the 2001 and succeeding crop years.

The RA policies, endorsement, underwriting rules, questions and answers, and actuarial documents for the 2001 crop year will be released electronically to all reinsured companies through FCIC's Website.

Notice: Accordingly, the publication on January 11, 2000, of the Notice of Availability at 65 FR 1677–1702 is adopted for the 2001 crop year as amended to revise the Revenue Assurance Insurance Policy Basic Provisions, delete the Spring Wheat Crop Provisions and add the Revenue Assurance Wheat Crop Provisions and the Winter Wheat Coverage Endorsement, effective beginning with the 2001 RA winter wheat crop program of insurance as follows:

1. Amend the Basic Provisions to:

Revise the definitions of ''approved yield,'' ''expected per-acre revenue,'' and ''per-acre revenue guarantee'' in section 1;

Revise sections 8(d) and (e); and

Add a new section 35.

Revenue Assurance Insurance Policy Basic Provisions

Approved yield. The actual production history (APH) yield determined in accordance with 7 CFR part 400, subpart G, including any adjustments elected under section 35.

Expected per-acre revenue. The approved yield times the projected harvest price (see section 1 of the Crop Provisions) for optional or basic units. A weighted average is used for enterprise or whole farm units.

Per-acre revenue guarantee. The coverage level percent times your approved yield, times the projected harvest price. If you choose the fall harvest price option provided in the Crop Provisions, the per-acre revenue guarantee equals the coverage level percent, times the approved yield, times the greater of the projected harvest price or the fall harvest price (see section 1 of the Crop Provisions). For basic and optional units, the per-acre revenue guarantee may vary by unit. For an enterprise unit, the per-acre revenue guarantee is a weighted average and will be the same for all insured acres of the crop in the county. For the whole farm unit, the per-acre revenue guarantee is a weighted average and will be the same for all insured acres in the county.

8. Annual Premium and Administrative Fees

(d) The premium subsidy amount depends on the coverage level percent and is calculated by multiplying the premium times the subsidy factor. If the coverage level percent is equal to or greater than .6500 and less than .7500, the premium subsidy factor is .59. If the coverage level percent is equal to or greater than .7500 and less than .8000, the premium subsidy factor is .55. If the coverage level percent is equal to or greater than .8000 and less than .8500, the premium subsidy factor is .48. If the coverage level percent is equal to or greater than .8500, the premium subsidy factor is .38. The producer premium equals the premium less the premium subsidy.

(e) In addition to the premium charged:

(1) You, unless otherwise authorized in 7 CFR part 400, must pay an administrative fee of $30 per crop per county for each crop year in which crop insurance coverage remains in effect;

(2) The administrative fee must be paid no later than the time that premium is due;

(3) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report, you may be subject to criminal and administrative sanctions;

(4) The administrative fee will be waived if you request it and you qualify as a limited resource farmer; and

(5) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

35. Substitution of Yields

You may elect to exclude actual yields used to calculate the APH yield that are less than 60 percent of the applicable transitional yield (T-yield), as defined in 7 CFR 400.52. Each excluded actual yield will be replaced with a yield equal to 60 percent of the applicable T-yield for the county. The replacement yields will be used in the

same manner as actual yields for the purpose of calculating the APH yield. Premium rates for approved yields that are adjusted under this section will be based on your yield prior to replacing the actual yields or such other basis as determined appropriate by us.

2. Add the Revenue Assurance Wheat Crop Provisions as follows:

Revenue Assurance Wheat Crop Provisions

This is a pilot risk management program. This risk management tool will be reinsured under the authority provided by the Federal Crop Insurance Act as amended. If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) these Crop Provisions; and (3) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Adequate stand. A population of live plants per unit of acreage which will produce at least the yield used to establish your revenue guarantee.

CBOT. The Chicago Board of Trade.

Fall harvest price. The price used to value production to count. For spring wheat, the fall harvest price is the simple average of the final daily settlement prices in August for the MGE September hard red spring wheat futures contract. This price will be released on or before September 5. For winter wheat in Idaho, Indiana, Kentucky, Michigan, Ohio and Tennessee, the fall harvest price is the simple average of the final daily settlement prices from July 1 to July 14 for the CBOT July soft red winter wheat futures contract. For Arkansas, Colorado, Iowa, Kansas, Missouri, Oklahoma and South Dakota, the fall harvest price is the simple average of the final daily settlement prices from July 1 to July 14 for the KCBT July hard red winter wheat futures contract. This price will be released on or before August 5.

Fall harvest price option. A coverage option that allows you to use the greater of the projected harvest price or the fall harvest price to determine your per acre revenue guarantee. For basic, optional, and enterprise units, this option applies to all insurable acres of a crop in the county. For the whole-farm unit, this option will apply to all insurable acres of the applicable crops in the county. This option must be selected by the sales closing date and is continuous unless canceled by the crop sales closing date.

Harvest. Combining or threshing the insured crop for grain. A crop which is swathed prior to combining is not considered harvested.

Initially planted. The first occurrence of planting the insured crop on insurable acreage for the crop year.

KCBT. The Kansas City Board of Trade.

Latest final planting date.

(a) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate a final planting date for spring-planted acreage only;

(b) The final planting date for fall-planted acreage in all counties for which the Special Provisions designate a final planting date for fall-planted acreage only; or

(c) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate final planting dates for both spring-planted and fall-planted acreage.

Local market price. The cash grain price per bushel for the U.S. No. 2 grade of wheat offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of wheat. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

MGE. Minneapolis Grain Exchange.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

Planted acreage. In addition to the definition contained in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted.

Prevented planting. In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

Prevented planting guarantee. The prevented planting guarantee for such acreage will be the selected percentage of the per-acre revenue guarantee for timely planted acres.

Projected harvest price. The price used to determine the expected per-acre revenue. For spring wheat the projected harvest price is the simple average of the final daily settlement prices in February for the MGE September hard red spring wheat futures contract. The projected harvest price for spring wheat will be released on or before March 5 of the current crop year. For winter wheat in Idaho, Indiana, Kentucky, Michigan, Ohio and Tennessee, the projected harvest price is the simple average of the final daily settlement prices from August 15 to September 14 for the following year CBOT July soft red winter wheat futures contract. For Arkansas, Colorado, Iowa, Kansas, Missouri, Oklahoma and South Dakota, the projected harvest price is the simple average of the final daily settlement prices from August 15 to September 14 for the following year KCBT July hard red winter wheat futures contract. The projected harvest price for winter wheat will be released on or before September 20 of the current crop year.

Sales closing date. In lieu of the definition contained in the Basic Provisions, a date contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both winter and spring types of the insured crop and you plant any insurable acreage of the winter type, you may not change your crop insurance coverage after the sales closing date for the winter type.

Swathed. Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

2. Unit Division

(a) In addition to the requirements of section 2(b) of the Basic Provisions, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat or only initially planted spring wheat. Optional units may be established in this manner only in counties having both winter and spring type final planting dates as designated in the Special Provisions.

(b) Winter wheat can not be insured under a whole-farm unit.

(c) In lieu of section 2(e) of the Basic Provisions that prohibits you from electing any other unit structure if you elect a whole farm unit, you must elect either a basic, optional, or enterprise

unit for your winter wheat even if you have elected a whole farm unit that includes spring wheat.

(d) If you qualify for and elect either a basic or optional unit for your winter wheat and you elect a whole farm unit on your spring crops, that includes spring wheat, your coverage level for the whole farm unit will be limited to the coverage level you elected for basic and optional units.

(e) If you qualify for and elect either a basic or optional unit for your winter wheat and you elect a whole farm unit on your spring crops, that does not include spring wheat, you may elect any applicable coverage level for the whole farm unit.

3. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is December 31 preceding the cancellation date for counties with a March 15 cancellation date and June 30 preceding the cancellation date for all other counties.

4. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation date	Termination date
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee, and all Wisconsin counties north thereof; all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels and Sheridan; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, Yankton and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee counties, Wisconsin, and all Wisconsin counties north thereof; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; California; Nevada; and Utah	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache counties, Colorado; Maine; Minnesota; Daniels and Sheridan counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie counties, Wyoming.	March 15	March 15.

5. Annual Premium

In addition to the provisions of section 8 of the Basic Provisions, your per-acre premium on a unit is determined using the premium calculator. Your per-acre premiums will differ by crop and unit structure.

(a) Basic unit: The annual premium for a basic unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(b) Optional unit: The annual premium for an optional unit equals the per-acre premium, times an optional unit surcharge factor, times the number of insured acres in the optional unit, times your share. The optional unit surcharge factor is 1.10.

(c) Enterprise unit: The annual premium for an enterprise unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections.

(d) Whole-farm unit: The annual premium for a whole-farm unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The insured per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The per-acre premium also depends on the proportions of insured crop acres on the unit. For example, if the unit contains corn, soybeans, and spring wheat, the per-acre premium will depend on the ratio of corn to soybean insured acres, the ratio of corn to spring wheat insured acres, and the ratio of soybean to spring wheat insured acres.

6. Insured Crop

(a) In accordance with section 9 of the Basic Provisions, the crop insured will be all the spring wheat and winter wheat in the county for which a premium rate is provided by the premium calculator:

(1) In which you have a share;

(2) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area;

(3) That is planted for harvest as grain; and

(4) That is not (unless allowed by the Special Provisions):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

(b) If you anticipate destroying any acreage prior to harvest you:

(1) May report all planted acreage when you report your acreage for the crop year and specify any acreage to be destroyed as uninsurable acreage. (By doing so, no coverage will be considered to have attached on the specified acreage and no premium will be due for such acreage. If you do not destroy such acreage, you will be subject to the under-reporting provisions contained in section 7 of the Basic Provisions); or

(2) If the actuarial documents provide a reduced premium rate for acreage destroyed by a date designated in the Special Provisions, you may report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage. Your premium amount will be reduced

by the amount shown on the actuarial documents for any acreage you destroy prior to a date designated in the Special Provisions if you do not claim an indemnity on such acreage. You must obtain our consent before and give us notice after you destroy any of the insured crop so your acreage report can be revised to make you eligible for this reduction in premium.

(c) In counties for which the Wheat Special Provisions designate both fall and spring final planting dates, you may elect a winter coverage endorsement for wheat. This endorsement provides two options for alternative coverage for wheat that is damaged between the fall final planting date and the spring final planting date. Coverage under the endorsement will be effective only if you designate the coverage option you elect by executing the endorsement by the sales closing date for winter wheat in the county.

7. Insurance Period

In lieu of the requirements under section 12 of the Basic Provisions, and subject to any provisions provided by the Winter Wheat Coverage Endorsement if you have elected such endorsement, the insurance period is as follows:

(a) Insurance attaches on each unit or part thereof on the later of the date we accept your application or the date the insured crop is planted.

(1) The following limitations apply:

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the type (winter or spring) except as allowed in section 12 of these Crop Provisions and section 17 of the Basic Provisions.

(ii) Whenever the Special Provisions designate only a fall final planting date, any acreage of winter wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type unless we agree that replanting is not practical.

(iii) Whenever the Special Provisions designate both fall and spring final planting dates, winter wheat planted on or before the fall final planting date which is damaged:

(A) Before the fall final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(B) On or after the fall final planting date, but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to an appropriate variety of wheat unless we agree that replanting is not practical.

If you have elected coverage under one of the available wheat winter coverage options available in the county, the insurance period for wheat will be in accordance with the selected options.

(iv) Whenever the Special Provisions designate a spring final planting date, any acreage of spring wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type unless we agree that replanting is not practical.

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted wheat is not insured unless you request such coverage and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your revenue guarantee. Insurance will then attach to acreage having an adequate stand on the earlier of the spring final planting date or the date we agree to accept the acreage for insurance. If such fall planted acreage is not to be insured it must be recorded on the acreage report as an uninsured fall planted crop.

(b) Insurance ends on each unit at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on the unit;

(4) October 31 of the calendar year in which the crop is normally harvested; or

(5) Abandonment of the crop on the unit.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period that results in an unavoidable loss of revenue:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply, if applicable, due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or

(i) A decline in the fall harvest price below the projected harvest price.

9. Replanting Payment

(a) A replanting payment for wheat is allowed as follows:

(1) You comply with all requirements regarding replanting payments contained under section 14 of the Basic Provisions and in the Winter Wheat Coverage Endorsement for which you are eligible and which you have elected;

(2) The wheat must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the revenue guarantee for the acreage. The projected harvest price is used to determine if 90 percent of the unit revenue guarantee can be achieved;

(3) The acreage must have been initially planted to spring wheat in those counties with only a spring final planting date;

(4) The damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated;

(5) Replanting must take place not later than 25 days after the spring final planting date; and

(6) The replanted wheat must be seeded at a rate that is normal for initially planted wheat (if new seed is planted at a reduced seeding rate into a partially damaged stand of wheat, the acreage will not be eligible for a replanting payment).

(b) No replanting payment will be made for acreage initially planted to winter wheat in any county for which the Special Provisions contain only a fall final planting date.

(c) In accordance with section 14(c) of the Basic Provisions, the maximum amount of the replanting payment per acre will be your share times the lesser of 20 percent of the per-acre revenue guarantee based on the projected harvest price or an amount equal to 3 bushels, times the projected harvest price.

(d) When wheat is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

In accordance with the requirements of section 15 of the Basic Provisions, if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier

of our inspection or 15 days after harvest of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim using the following procedures:

(1) Basic and Optional units: We will settle your claim on each basic or optional unit by:

(i) Multiplying the unit's per-acre revenue guarantee by the number of insured acres in the unit;

(ii) Multiplying the fall harvest price by the production to count for each unit (see sections 11(c) through (e);

(iii) Subtracting the result of section 11(b)(1)(ii) from the result of section 11(b)(1)(i); and

(iv) Multiplying the results of section 11(b)(1)(iii) by your share.

If the result of section 11(b)(1)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(2) Enterprise units: We will settle your claim on an enterprise unit by:

(i) Multiplying the enterprise unit's per-acre revenue guarantee by the number of insured acres in the enterprise unit;

(ii) Multiplying the fall harvest price by the production to count for the enterprise unit;

(iii) Subtracting the result of section 11(b)(2)(ii) from the result of section 11(b)(2)(i); and

(iv) Multiplying the result of section 11(b)(2)(iii) by your share.

If the result of section 11(b)(2)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(3) Whole-farm units: We will settle your claim on a whole-farm unit by:

(i) Multiplying the per acre revenue guarantee for each crop by the number of insured acres planted to each crop;

(ii) Totaling the results of section 11(b)(3)(i);

(iii) Multiplying the fall harvest price for each crop by the production to count for each crop;

(iv) Totaling the results of section 11(b)(3)(iii);

(v) Subtracting the result of section 11(b)(3)(iv) from the result of section 11(b)(3)(ii); and

(vi) Multiplying the result of section 11(b)(3)(v) by your share.

If the result of section 11(b)(3)(vi) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(c) The total production to count in bushels from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the per-acre revenue guarantee will be used for such acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(d)); and

(iv) Potential production on insured acreage that you intend to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature wheat production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 13.5 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (heat-damaged kernels will not be considered to be damaged), shrunken or broken kernels, defects (foreign material and heat damage will not be considered to be defects), a musty, sour, or commercially objectional foreign odor (except smut odor), or grading garlicky, light smutty, smutty or ergoty;

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed to grade the wheat under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) The wheat production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(e) Any production harvested from plants growing in the wheat may be counted as production of the wheat on a weight basis.

12. Late Planting

A late planting period is not applicable to fall-planted wheat. Any

winter wheat that is planted after the fall final planting date in counties for which the Special Provisions also contain a final planting date for spring wheat will not be insured. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions contain only a fall final planting date will not be insured unless you were prevented from planting the winter wheat by the fall final planting date. Such acreage will be insurable, and the revenue guarantee and premium for the acreage will be determined in accordance with sections 17(b) and (c) of the Basic Provisions

13. Prevented Planting

(a) In addition to the provisions contained in section 18 of the Basic Provisions, in counties for which the Special Provisions designate a spring final planting date, your prevented planting per-acre revenue guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

(b) Your prevented planting coverage will be 60 percent of your per-acre revenue guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

3. Add the Revenue Assurance Optional Endorsement Winter Wheat Coverage Endorsement as follows:

Revenue Assurance Optional Endorsement Winter Wheat Coverage Endorsement

(This is a Continuous Endorsement)

(a) In return for payment of the additional premium as indicated in the premium calculator, this endorsement is attached to and made a part of your Revenue Assurance Wheat Crop Provisions subject to the terms and conditions described herein.

(b) This endorsement is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

(c) This endorsement modifies the provisions of sections 7 and 11 of the Revenue Assurance Wheat Crop Provisions.

(1) You must have the Revenue Assurance Wheat Crop Policy in force.

(2) You may select either Option A or Option B. Failure to select either Option A or Option B means that you have rejected both Options and this endorsement would be void.

(3) Insurance Period. Coverage under this endorsement begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

(4) The provisions under section 15 of the Revenue Assurance Insurance Policy Basic Provisions are amended to require that all notices of damage must be provided to us by the spring final planting date designated in the Special Provisions.

Option A (30 Percent Coverage and Acreage Release)

Whenever any winter wheat is damaged during the insurance period (see section (c)(3) above), and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the Revenue Guarantee for the acreage (to calculate the actual percentage, multiply the appraised production determined in accordance with section 11(c)(1) of the Revenue Assurance Wheat Crop Provisions times the Projected Harvest Price and then divide that quantity by the Revenue Guarantee), you may, at your option, take one of the following actions:

(a) Destroy the remaining crop on such acreage. By doing so, you agree to accept an amount of Calculated Revenue equal to 70 percent of the Revenue Guarantee as revenue to count for the damaged acreage, or an appraisal determined in accordance with section 11(c)(1) of the Revenue Assurance Wheat Crop Provisions if such an appraisal results in a greater amount of Calculated Revenue. This amount will be considered Calculated Revenue to Count in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions under section 11 of the Revenue Assurance Wheat Crop Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner that results in a clear and discernible break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in such a manner that permits us to verify the amount of spring wheat production separately from any winter wheat production. In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

(b) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Revenue Assurance Insurance Policy Basic Provisions, Revenue Assurance Wheat Crop Provisions, and this Option.

(c) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9 of the Revenue Assurance Wheat Crop Provisions. By doing so, coverage will continue under the terms of the Revenue Assurance Insurance Policy Basic Provisions, the Revenue Assurance Wheat Crop Provisions, and this Option, and the Revenue Guarantee for winter wheat will remain in effect

Option B (With Full Winter Damage Coverage)

Whenever any winter wheat is damaged during the insurance period (see section (c)(3) above), and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the Revenue Guarantee for the acreage (to calculate the actual percentage, multiply the appraised production determined in accordance with section 11(c)(1) of the Revenue Assurance Wheat Crop Provisions times the Projected Harvest Price and then divide that quantity by the Revenue Guarantee), you may, at your option, take one of the following actions:

(a) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Revenue Assurance Insurance Policy Basic Provisions, the Revenue Assurance Wheat Crop Provisions, and this Option.

(b) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9 of the Revenue Assurance Wheat Crop Provisions. By doing so, coverage will continue under the terms of the Revenue Assurance Insurance Policy Basic Provisions, the Revenue Assurance Wheat Crop Provisions, and this Option, and the Final Guarantee for winter wheat will remain in effect.

(c) Accept our appraisal of the crop on the damaged acreage as Calculated Revenue to count against the Revenue Guarantee for the damaged acreage, destroy the remaining crop on such acreage, and be eligible for any indemnity due under the terms of the Revenue Assurance Insurance Policy Basic Provisions and the Revenue Assurance Wheat Crop Provisions. The

appraisal will be considered Calculated Revenue in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions of section 11 of the Revenue Assurance Wheat Crop Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner that results in a clear and discernible break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in a manner which permits us to verify the amount of spring wheat production separately from any winter wheat production. In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

Signed in Washington, D.C., on June 29, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–17149 Filed 7–6–00; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Crop Revenue Coverage

ACTION: Notice of availability.

SUMMARY: In accordance with section 508(h) of the Federal Crop Insurance Act (Act), since 1996 the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) has approved for reinsurance and subsidy the insurance of corn, grain sorghum, soybeans, cotton, rice, and wheat in select states and counties under the Crop Revenue Coverage (CRC) plan of insurance submitted by American Agrisurance (AmAg). This notice is intended to inform eligible producers and the private insurance industry of revisions to the Crop Revenue Coverage (CRC) Insurance Policy Basic Provisions, the Crop Revenue Coverage Insurance Policy Wheat Crop Provisions, and the Crop Revenue Coverage Mandatory Actuarial Document Endorsement Commodity Exchange Endorsement—Wheat, for the 2001 and succeeding crop years.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Dr., Kansas City, Missouri 64133, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 508(h) of the Act allows for the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act.

In accordance with section 508(h) of the Act, the Board approved a program of insurance known as CRC, submitted by American Agrisurance, an exclusive marketing agent and wholly owned subsidiary of Acceptance Insurance Companies, Inc. All terms and conditions of the policy and all premium rates are determined by AmAg. FCIC does not have the authority to modify or waive any terms or conditions. FCIC only has the authority to approve or disapprove the terms and conditions submitted by AmAg.

The CRC program has been approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses in an amount authorized under section 508(e) of the Act. CRC is designed to protect producers against both price and yield losses.

On Tuesday, November 30, 1999, FCIC published a Notice of availability in the **Federal Register** at 64 FR 66839–66866 to revise the Basic Provisions, Crop Provisions, and Commodity Exchange Endorsements to be effective beginning with the 2000 CRC spring crop programs.

AmAg has requested the CRC program for winter wheat for the 2001 crop year be changed to remove the CRC base price and harvest price for Winter Durum Wheat in Arizona and California, incorporate changes to allow for continuous rating of crop insurance policies, change the cancellation and termination dates for some counties and make minor edits for clarification. The CRC program for durum wheat is being removed from Arizona and California because of an inability to determine prices from the current market. Other changes made include those changes in the administrative fees and producer subsidies as well as the substitution of yields in the producers's actual production history mandated by the Agricultural Risk Protection Act of 2000.

Accordingly, FCIC herewith gives notice of the above stated changes for the 2001 and succeeding crop years.

The CRC policies, endorsements, underwriting rules, questions and answers, premium calculation worksheet, and actuarial documents for the 2001 crop year will be released electronically to all reinsured companies through FCIC's Website.

Notice: Accordingly, the publication on November 30, 1999, Notice of availability at 64 FR 66839–66866 is adopted with revisions to the Crop Revenue Coverage (CRC) Insurance Policy Basic Provisions, Crop Revenue Coverage Insurance Policy Wheat Crop Provisions, and Crop Revenue Coverage Mandatory Actuarial Document Endorsement Commodity Exchange Endorsement—Wheat, effective beginning with the 2001 crop year as follows:

Crop Revenue Coverage (CRC) Insurance Policy Basic Provisions

1. In section 1, the definitions of ''actuarial documents,'' ''additional coverage,'' ''administrative fee,'' and ''approved yield'' are revised to read as follows:

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office, and which show the revenue guarantees, coverage levels, practices, insurable acreage, and other related information regarding crop insurance in the county.

Additional coverage. A level of coverage equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the Base Price, or a comparable coverage.

Administrative fee. An amount you must pay for additional coverage for each crop year as specified in section 8.

Approved yield. The actual production history (APH) yield determined in accordance with 7 CFR part 400, subpart G, including any adjustments elected under section 35. This yield is established for basic or optional units. The approved yield for each basic or optional unit comprising an enterprise unit is retained for premium and final guarantee purposes under an enterprise unit.

2. In section 1, the definition of ''base premium rate'' has been added to read as follows:

Base premium rate. A premium rate used to calculate the risk associated with yield.

3. In section 1, the definition of ''CRC rate'' has been replaced with ''CRC base rate'' and is revised to read as follows:

CRC base rate. The premium rate used to calculate the risk associated with revenue.

4. In section 1, the definition of ''Limited coverage'' is removed.

5. Section 3(b) is revised to read as follows:

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable, (except as stated herein) coverage level, crop, type, variety or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop.

6. Section 3(e)(10) is revised to read as follows:

(10) For example, if crop A, with a termination date of October 31, 2000, and crop B, with a termination date of March 15, 2001, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2000, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 2001. If you enter an agreement to repay the debt on April 25, 2001, you can apply for insurance for crop A by the October 31, 2001, sales closing date and crop B by the March 15, 2002, sales closing date. If you fail to make a scheduled payment on November 1, 2001, you will be ineligible for crop insurance effective on November 1, 2001, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

7. Section 4(a), is revised to read as follows:

(a) For each crop year, the Final Guarantee and coverage level at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the Special Provisions or in the actuarial documents.

8. Section 8(c) is revised to read as follows:

(c) Your annual premium amount is determined by:

(1) Multiplying the Approved Yield times the Coverage Level, times the Base Premium Rate, and times the Base Price as defined in the Commodity Exchange Endorsement;

(2) Multiplying the Approved Yield times the Coverage Level, times the CRC Base Rate, and times the CRC Low Price Factor specified in the actuarial documents;

(3) Multiplying the Approved Yield times the Coverage Level, times the Base Premium Rate, and times the CRC High Price Factor specified in the actuarial documents;

(4) Adding sections 8(c)(1), (2), and (3);

(5) Multiplying the result of section 8(c)(4) times the Acres insured, times your Share at the time coverage begins, and as applicable, times any CRC Option Factor; Yield Adjustment Surcharge; and/or CRC Enterprise Option Factor;

(6) Multiplying the result of section 8(c)(5) times the applicable producer subsidy percentage to calculate the appropriate amount of subsidy. The producer subsidy percentage is based upon the coverage level and is contained in the actuarial documents; and

(7) Subtracting section 8(c)(6) from section 8(c)(5).

9. Section 8(d) is removed and the remaining section is redesignated, accordingly.

10. Section 8(e) redesignated as 8(d) is revised as follows:

(d) In addition to the premium charged:

(1) You, unless otherwise authorized in 7 CFR part 400, must pay an administrative fee each crop year of $30 per crop per county.

(2) The administrative fee must be paid no later than the time that premium is due.

(3) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report, you may be subject to criminal and administrative sanctions.

(4) The administrative fee will be waived if you request it and you qualify as a limited resources farmer.

(5) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

11. Section 34(c) is revised to read as follows:

(c) A written agreement may only be used to insure a CRC crop in a county without a CRC program if the county without a CRC program is adjacent to a county with a CRC program;

12. Section 35 is added as follows:

Section 35. Substitution of Yields

You may elect to exclude actual yields used to calculate the APH yield that are less than 60 percent of the applicable transitional yield (T-yield), as defined in 7 CFR 400.52. Each excluded actual yield will be replaced with a yield equal to 60 percent of the applicable T-yield for the county. The replacement yields will be used in the same manner as actual yields for the purpose of calculating the APH yield. Premium rates for approved yields that are adjusted under this section will be based on your yield prior to replacing the actual yields or such other basis as determined appropriate by us.

Crop Revenue Coverage Insurance Policy Wheat Crop Provisions

13. Section 3 is revised to read as follows:

3. Coverage Level

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of wheat in the county insured as grain under this policy will have the same coverage level.

14. Section 5 is revised to read as follows:

5. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation date	Termination date
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee and all Wisconsin counties north thereof; and all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.

State and county	Cancellation date	Termination date
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt and San Miguel counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware and Dubuque counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels and Sheridan; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, Yankton and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown and Kewaunee counties, Wisconsin, and all Wisconsin counties north thereof; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; California; Nevada; and Utah	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande and Saguache counties, Colorado; Maine; Minnesota; Daniels and Sheridan counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie counties, Wyoming.	March 15	March 15.

15. Section 11(e)(2)(i) is revised to read as follows:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (heat-damaged kernels will not be considered to be damaged), shrunken or broken kernels, defects (foreign material and heat damage will not be considered to be defects), a musty, sour, or commercially objectional foreign odor (except smut odor) or grading garlicky, light smutty, smutty or ergoty;

16. The Crop Revenue Coverage Mandatory Actuarial Document Endorsement Commodity Exchange Endorsement—Wheat, is revised to read as follows:

Crop Revenue Coverage Mandatory Actuarial Document Endorsement Commodity Exchange Endorsement—Wheat

(This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage:

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Wheat crop policy provisions and actuarial documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Wheat policy are determined.

(III) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by totaling all the daily settlement prices for the contract specified in the applicable Base Price or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price or Harvest Price definition, and dividing that sum by the total number of days included in the total. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price or Harvest Price definition. A full active trading day is any day on which there are twenty-five (25) or more open interest contracts of the contract specified in the Base Price or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(IV) This endorsement defines the Base Price and Harvest Price as shown in Section 1 of the Crop Revenue Coverage Basic Provisions by wheat type and state as follows:

Winter Wheat—(Insured as winter wheat), Chicago Board of Trade (CBOT)

Illinois, Indiana, Michigan, Ohio, and Wisconsin

Base Price (CBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (CBOT)—The July 15 to August 14 harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by August 20 of the harvest year.

Winter Wheat—(Insured as winter wheat), (CBOT)

Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia

Base Price (CBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (CBOT)—The June harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by July 10 of the harvest year.

Winter Wheat—(Insured as winter wheat), Kansas City Board of Trade (KCBOT)

Iowa, Montana, Nebraska, South Dakota, and Wyoming

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (KCBOT)—The July 15 to August 14 harvest year's average daily settlement price for the harvest year's KCBOT September hard red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by August 20 of the harvest year.

Winter Wheat—(Insured as winter wheat), (KCBOT)

Arizona, Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, and Texas

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (KCBOT)—The June harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by July 10 of the harvest year.

Spring Wheat—(Insured as spring wheat in counties with a 3/15 cancellation date), Minneapolis Grain Exchange (MGE)

Colorado, Minnesota, Montana, North Dakota, South Dakota, and Wyoming

Base Price (MGE)—The February harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Spring Wheat—(Insured as spring wheat in counties with a 9/30 cancellation date), (KCBOT/MGE)

Colorado, Iowa, Montana, South Dakota, Wisconsin, and Wyoming

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Wheat—Portland Grain Exchange (PGE)

California, Idaho, Oregon, Utah, and Washington

Base Price (PGE)—The Portland Price equals the August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) plus an adjustment equal to the current five-year average difference between the August average daily settlement price for the nearby CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) and the August average daily settlement price for the PGE soft white wheat contract (rounded to the nearest whole cent). The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (PGE)—The August harvest year's average daily settlement price for the PGE soft white wheat contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Durum Wheat—(Insured as durum wheat in counties with a 3/15 cancellation date), (MGE)

North Dakota counties of Benson, Bottineau, Burke, Cavalier, Divide, Mclean, Mountrail, Nelson, Pierce, Ramsey, Renville, Rolette, Towner, Ward, Williams

Base Price (MGE)—The February harvest year's average daily settlement price for the harvest year's MGE September durum wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September durum wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

All other terms and conditions of the Policy remain unchanged.

Signed in Washington, D.C. on June 29, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–17150 Filed 7–6–00; 8:45 am]

BILLING CODE 3410–08–U

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC) Meeting

AGENCY: Forest Service, USDA Forest Service.

ACTION: Action of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday, July 20, 2000. The meeting is scheduled to begin at 9 a.m., and will conclude at approximately 3 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes:

(1) Survey and Manage update,
(2) BLM Off Highway Vehicle strategy,
(3) Public forum,
(4) Forest Service Roadless Area Conservation proposal,
(5) Information sharing.

The Public Forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the June 15 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon, 97401; (541) 465–6924.

Dated: June 30, 2000.

Y. Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 00–17176 Filed 7–6–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 7, 2000.

ADDRESS: 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: Louis R. Bartalot (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 possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. 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 services to the Government.
2. The action will result in authorizing small entities to furnish the 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 services 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.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance

Family Housing and Naval Hospital, Marine Corps Base, Camp Lejeune, North Carolina.
NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina.

Janitorial/Custodial

U.S. Army Reserve Center, 180 High Street, Fairfield, Connecticut.
NPA: CW Resources, Inc., New Britain, Connecticut.

Janitorial/Custodial

U.S. Army Reserve Center, AMSA 69, 26 Seamans Lane, Milford, Connecticut.
NPA: CW Resources, Inc., New Britain, Connecticut.

Janitorial/Custodial

U.S. Department of Agriculture, Avian Disease and Oncology Lab, East Lansing, Michigan.
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan.

Switchboard Operation

VA Hudson Valley Health Care System, Castle Point Campus, Castle Point, New York.
NPA: Blind Work Association, Binghamton, New York.

Switchboard Operation

VA Hudson Valley Health Care System, FDR Campus, Albany Post Road, Montrose, New York.
NPA: Blind Work Association, Binghamton, New York.

Deletions

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.
2. The action will result in authorizing small entities to furnish the commodities 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 commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Paper, Kraft Wrapping

8135–00–160–7752
8135–00–160–7770

Tree Marking Paint and Tracer Element

8010–01–273–3769
8010–01–273–3768
8010–01–273–3767
8010–01–273–3766
8010–01–274–2569
8010–01–274–2568
8010–01–274–2564
8010–01–273–3765
8010–01–273–3764
8010–01–273–3763
8010–01–273–8705
8010–01–274–2567
8010–01–274–7795
8010–01–274–2563
8010–01–274–2574
8010–01–274–2573
8010–01–274–2572
8010–01–274–2571
8010–01–274–2566
8010–01–274–2565
8010–01–274–2562
8010–01–380–1779
8010–01–380–1770
8010–01–380–1706
8010–01–380–1710
8010–01–380–1777
8010–01–380–1781
8010–01–380–1708
8010–01–380–1732
8010–01–380–1700
8010–01–380–1727
8010–01–380–1756
8010–01–380–1702
8010–01–380–1745
8010–01–380–1735
8010–01–380–1766
8010–01–380–1755
8010–01–380–1769

8010–01–380–1763
8010–01–380–1739
8010–01–380–1757
8010–01–380–1753

Louis R. Bartalot,
Deputy Director (Operations).
[FR Doc. 00–17233 Filed 7–6–00; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocations in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received requests to revoke four antidumping duty orders in part.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (1999), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Ball Bearings and Cylindrical Roller Bearings from France, Polyvinyl Alcohol from Taiwan, and Ball Bearings from the United Kingdom.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than May 31, 2001.

Antidumping duty proceedings	Period to be reviewed
Belgium: Stainless Steel Plate in Coils, A–423–808:	
ALZ, N.V.	11/4/98–4/30/00
Brazil: Frozen Concentrated Orange Juice, A–351–605:	
Citrovita Agro Industrial Ltda/Cambuhy MC Industrial Ltda/Cambuhy Citrus Comercial e Exportadora	5/1/99–4/30/00
Branco Peres Citrus S.A.	
CTM Citrus S.A.	
Sucorrico S.A.	
Indonesia: Extruded Rubber Thread, A–560–803:	
PT Swasthi Parama Mulya	5/12/99–4/30/00
Italy: Stainless Steel Plate in Coils, A–475–822:	
Acciai Speciali Terni S.p.A.	11/4/98–4/30/00
Japan: Polyvinyl Alcohol, A–588–836:	
Kuraray Co., Ltd.	5/1/99–4/30/00
Republic of Korea: DRAMs, A–580–812:	
LG Semicon Co., Ltd.	5/1/99–4/30/00
Hyundai Electronics Industries Co.	
G5 Corporation	
Wooyang Industry Co.	
Kim's Marketing	
Jewon Trading	
Kae Won Microelectronics	
Techsan Electronics	
Republic of Korea: Stainless Steel Plate in Coils, A–580–831:	
Pohang Iron & Steel Co., Ltd.	11/4/98–4/30/00
South Africa: Stainless Steel Plate in Coils, A–791–805:	
Columbus Stainless Steel Company	11/4/98–4/30/00
Taiwan: Stainless Steel Plate in Coils, A–583–830:	
Ta Chen Stainless Pipe Co., Ltd.	11/4/98–4/30/00
Yieh United Steel Corporation.	
Taiwan: Polyvinyl Alcohol, A–583–824:	
Chang Chun Petrochemical Co., Ltd.	5/1/99–4/30/00
Turkey: Certain Steel Concrete Reinforcing Bars, A–489–807:	
Diler Demir Celik Endustrisi ve Ticaret A.S. [1]	4/1/99–3/31/00

[1] Inadvertently omitted from previous initiation notice.

Anti-friction bearings proceedings and firms [2]	Period/class or kind
France: A–427–801	5/1/99–4/30/00
SKF France S.A. (including all relevant affiliates)	Ball & Spherical
Societe Nouvelle de Roulements (SNR)	Ball & Cylindrical
SNFA S.A./Somecat S.p.A. (including all relevant affiliates)	Cylindrical
Alfateam	Ball
Alpha-Team	Do.
Bearing Discount International GmbH	Do.

Anti-friction bearings proceedings and firms [2]	Period/class or kind
Motion Bearings Pte Ltd	Do.
Yoo Shin Commercial Company Ltd	Do.
Rodamientos Rovi	Do.
Rovi-Valencia	Do.
Rovi-Marcay	Do.
Representaciones Industriales Rodrigues, S.A	Do.
DCD Ball	Do.
EuroLatin Exnport Services Ltd	Do.
Germany: A–428–801	5/1/99–4/30/00
Cerobear GmbH	Ball & Cylindrical
FAG Kugelfischer George Schaefer AG (including all relevant affiliates)	Do.
INA Walzlager Schaeffler KG	Cylindrical
SKF GmbH (including all relevant affiliates)	Ball & Cylindrical
SNR	Do.
Torrington Nadellager GmbH	Do.
Alfateam	Do.
Alpha-Team	Do.
Bearing Discount International GmbH	Do.
Motion Bearings Pte Ltd	Do.
Yoo Shin Commercial Company Ltd	Do.
Rodamientos Rovi	Do.
Rovi-Valencia	Do.
Rovi-Marcay	Do.
Representaciones Industriales Rodrigues, S.A.	Do.
DCD	Do.
EuroLatin Export Services Ltd	Do.
Italy: A–475–801	5/1/99–4/30/00
FAG Italia S.p.A. (including all relevant affiliates)	Ball & Cylindrical
SOMECAT S.p.A./SNFA Italy (including all relevant affiliates)	Ball
Alfateam	Ball
Alpha-Team	Do.
Bearing Discount International GmbH	Do.
Motion Bearings Pte Ltd	Do.
Yoo Shin Commercial Company Ltd	Do.
Rodamientos Rovi	Do.
Rovi-Valencia	Do.
Rovi-Marcay	Do.
Representaciones Industriales Rodrigues, S.A	Do.
DCD	Do.
EuroLatin Export Services Ltd	Do.
Japan: A–588–804	5/1/99–4/30/00
Koyo Seiko Co., Ltd	All
Sapporo Precision Inc	Do.
NSK Ltd. (formerly Nippon Seiko K.K.)	Ball & Cylindrical
NTN Corporation	All
Inoue Jikuuke Kogyo Co., Ltd. (IJK)	Ball
Izumoto Seiko Co., Ltd. (IKS)	Do.
Muro Corporation	Do.
(Initiation of 5/1/98–4/30/99 review deferred, 64 FR 35124, 6/30/99)	
Romania: A–485–801	5/1/99–4/30/00
S.C. Koyo Romania S.A.	Ball
Singapore: A–559–801	5/1/99–4/30/00
NMB Singapore Ltd./Pelmec Industries (Pte.) Ltd	Ball
Sweden: A–401–801	5/1/99–4/30/00
SKF Sverige AB (including all relevant affiliates)	Ball
Alfateam Ball	Do.
Alpha-Team	Do.
Bearing Discount International GmbH	Do.
Motion Bearings Pte Ltd	Do.
Yoo Shin Commercial Company Ltd	Do.
Rodamientos Rovi	Do.
Rovi-Valencia	Do.
Rovi-Marcay	Do.
Representaciones Industriales Rodrigues, S.A	Do.
DCD	Do.
EuroLatin Export Services Ltd	Do.
The United Kingdom: A–412–801	5/1/99–4/30/00
NSK Bearings Europe Ltd./RHP Bearings Ltd	Ball & Cylindrical
Barden Corporation	Do.
SNFA Bearings Limited/Somecat S.P.A. (including all relevant affiliates)	Ball
SNR Roulements	Ball & Cylindrical
Timken Aerospace UK, Ltd	Ball
Countervailing duty proceedings:	
Belgium: Stainless Steel Plate in Coils, C–423–809: ALZ, N.V	1/1/99–12/31/99

Anti-friction bearings proceedings and firms [2]	Period/class or kind
Italy: Stainless Steel Plate in Coils, C–475–823: Acciai Speciali Terni S.p.A	1/1/99–12/31/99
Suspension Agreements: None.	

[2] These orders are currently undergoing a ''sunset'' review pursuant to section 751(c) of the Act. If subsequent to publication of this initiation notice the orders should be revoked pursuant to ''sunset,'' any review (if initiated) or automatic liquidation instruction (if no review is initiated) will only cover through the last day prior to the effective date of revocation.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: June 30, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II, for Import Administration.

[FR Doc. 00–17247 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

April 2000 Sunset Reviews: Final Results and Revocation

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

ACTION: Notice of final results of five-year (''Sunset'') review: Revocation of antidumping duty order on pure magnesium from Russia.

SUMMARY: On April 3, 2000, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on pure magnesium from Russia (65 FR 17484) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking this order.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1995, the Department issued the antidumping duty order on pure magnesium from Russia (60 FR 25691) pursuant to section 736(a) of the Tariff Act of 1930, as amended (''the Act''). The Department initiated a sunset review of this order by publishing a notice of the initiation in the **Federal Register**, April 3, 2000 (65 FR 17484). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of the sunset review on this order.

No domestic interested parties responded to the notice of initiation by the April 18, 2000 deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) (''*Sunset Regulations*'')).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the order. Because no domestic interested party responded to the notice of initiation by the applicable deadline, April 18, 2000, we are revoking this antidumping duty order.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: June 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17249 Filed 7–06–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent To Revoke Order in Part

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

ACTION: Notice of preliminary results of 1998–1999 administrative review, partial rescission of the review, and notice of intent to revoke order in part.

SUMMARY: We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 1998, through May 31, 1999. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs

Service to assess antidumping duties based on the differences between the U.S. price and normal value on all appropriate entries.

China National Machinery Import & Export Corporation, Wafangdian Bearing Group Corp. Import & Export Company, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we preliminarily find that three of the four companies qualify for revocation. As such, we intend to revoke the order with respect to the subject merchandise produced and exported by these companies.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Melani Miller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0189 and (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR part 351 (April 1999).

Background

On May 27, 1987, the Department published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC''). The Department notified interested parties of the opportunity to request an administrative review of this order on June 9, 1999 (64 FR 30962). On June 21, 1999, Wafangdian Bearing Group Corp. Import & Export Company (''Wafangdian'') and Zhejiang Machinery Import & Export Corp. (''ZMC'') requested administrative reviews. On June 24, 1999, Wanxiang Group Corporation (''Wangxiang'') and China National Machinery Import & Export Corporation (''CMC'') requested administrative reviews. Wafangdian, ZMC, Wangxiang, and CMC also requested that the Department revoke the antidumping duty order as it pertains to them. On June 30, 1999, the petitioner, The Timken Company, requested that the Department conduct an administrative review of the antidumping duty order on hundreds of PRC TRB exporters. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 29, 1999 (64 FR 41075).

On September 1, 1999, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested information relevant to the issue of whether the companies named in the initiation notice are independent from government control. *See* the *Separate Rates Determination* section, below. Courtesy copies of the questionnaire were also sent to companies with legal representation.

We received responses to the questionnaire from the following ten companies: CMC, Liaoning MEC Group Co. Ltd. (''Liaoning''), Luoyang Bearing Corp. (Group) (''Luoyang''), Premier Bearing & Equipment Ltd. (''Premier''), Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory (''Hailin''), Wafangdian, Wanxiang, Weihai Machinery Holding (Group) Co., Ltd. (''Weihai''), ZMC, and Zhuzhou Torch Spark Plug Co., Ltd. (''Torch'').

In addition, on October 8, 1999, Zhejiang Changshan Changhe Bearing Corp. (''ZCCBC'') reported no shipments of subject merchandise to the United States during the period of review (''POR''), June 1, 1997, through May 31, 1998, other than those shipments already being examined by the Department as part of ZCCBC's new shipper review. Therefore, in accordance with section 351.213(d)(3) of our regulations, we preliminarily conclude that there were no applicable shipments from ZCCBC to the United States during the POR and are rescinding the review with respect to this company. However, we will confirm with the Customs Service that ZCCBC had no shipments prior to issuing the final results.

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

Scope of Review

Merchandise covered by this review includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Separate Rates Determination

As discussed below in the *Normal Value* section of this notice, we are treating the PRC as a nonmarket economy (''NME'') country within the meaning of section 773(c) of the Act. We allow companies in NMEs to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

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

agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide,* 59 FR at 22587, and *Sparklers,* 56 FR at 20589).

In previous administrative reviews of the antidumping duty order on TRBs from the PRC, we determined that CMC, Liaoning, Luoyang, Hailin, Wafangdian, Wanxiang, Weihai, and ZMC, should receive separate rates (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part*, 63 FR 63842 (November 17, 1998) (''*TRBs X''*)). We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to these companies' exports according to the criteria identified in *Sparklers* and *Silicon Carbide*. The evidence in question consisted of, among other things, the companies' business licenses and copies of relevant PRC laws on trade and incorporation. Therefore, we have continued to assign each of these companies a separate rate.

Premier is a privately owned Hong Kong trading company which purchases TRBs from the PRC for resale throughout the world. Because Premier's PRC-based suppliers do not know the destination of their merchandise, we have determined that Premier, rather than its suppliers, is the proper respondent with respect to its sales of TRBs to the United States. Therefore, Premier's suppliers need not undergo a separate-rates analysis. See the *United States Sales* section, below.

Separate-Rate Determinations for Non-Responsive Companies

We have preliminarily determined that companies which did not respond to the questionnaire should not receive separate rates. See the *Use of Facts Otherwise Available* section, below.

Use of Facts Otherwise Available

We preliminarily determine that companies which did not respond to our requests for information did not cooperate to the best of their ability. Thus, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for such companies. Furthermore, because factors data for certain of Premier's U.S. sales were not provided by Premier's suppliers, we preliminarily determine that such parties did not demonstrate that they cooperated to the best of their ability, and we have applied adverse facts available to calculate a portion of Premier's margin.

1. Companies that did not respond to the questionnaire: Where the Department must base its determination on facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (''SAA'') provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

We have preliminarily assigned a margin of 33.18 percent to those companies for which we initiated a review and which did not respond to the questionnaire. This margin, calculated for sales by Xiangfan Machinery Import & Export (Group) Corp. during the 1996–97 review, represents the highest overall margin calculated for any firm during any segment of this proceeding. As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances or documentation indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 33.18 percent rate is corroborated.

As noted in the *Separate Rates Determination* section above, we have also preliminarily determined that the non-responsive companies should not receive separate rates. Thus, they are viewed as part of the PRC-wide entity. Accordingly, the facts available for these companies form the basis for the PRC rate, which is 33.18 percent for this review.

2. Premier: Premier, a Hong Kong-based reseller of TRBs, obtains TRBs from numerous PRC suppliers. Because Premier is only a reseller of TRBs and does not produce the subject merchandise itself, factors data must be obtained from its suppliers. In response to our questionnaire, Premier provided factors data from three of its seventeen suppliers. In addition to requesting factors data from Premier, we also requested factors data directly from Premier's suppliers. However, none responded. Consequently, we do not have factors data for all TRB models sold by Premier in the United States.

As in prior reviews, we have preliminarily determined that there is little variation in factor utilization rates among the TRB producers from which we have received FOP data (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review*, 63 FR 37339, 37342 (July 10, 1998) (''*Preliminary TRBs X*'')). Therefore, for the models for which we have appropriate information, we are using, as facts available, the factors data we received from manufacturers which did not supply Premier during the POR but manufactured the same models of TRBs, in order to calculate normal value.

For the sales of TRB models for which no factors data is available, we have preliminarily determined, in accordance with section 776(a) of the Act, to use facts available. The use of facts available is necessary because the necessary factors data for these models is not available on the record. We also preliminarily find, in accordance with section 776(b) of the Act, that in determining the appropriate facts available an adverse inference is warranted because interested parties did not cooperate to the best of their ability. Interested parties did not cooperate to the best of their ability because they refused to provide information specifically requested by the Department.

Thus, with respect to Premier's U.S. sales for which no corresponding factors data were reported, we are applying, as adverse facts available, a margin of 25.56 percent, the highest overall margin ever applicable to Premier. This approach is consistent with our final results in prior reviews (see, *e.g., TRBs X* 63 FR 63857). As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 25.56 percent rate is corroborated.

United States Sales

Premier reported that it maintains inventories of TRBs in Hong Kong and sells TRBs worldwide. Therefore, its PRC-based suppliers have no knowledge when they sell to the Hong Kong firm that the shipments are destined for the United States. Because Premier is the first party to sell the merchandise to the United States, we have calculated U.S. price of this merchandise based on Premier's sales data.

For certain sales made by Premier and CMC we based the U.S. price on constructed export price (''CEP'') in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by other respondents, as well as the other sales made by Premier and CMC, we based the U.S. sales on export price (''EP''), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances.

We calculated EP based on the FOB, CIF, or C&F port prices to unaffiliated purchasers, as appropriate. From these prices we deducted amounts, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We valued the deduction for foreign inland freight using surrogate data (Indian freight costs). (We selected India as the surrogate country for the reasons explained in the *Normal Value* section of this notice.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using the surrogate data (amounts charged by international providers). When marine insurance and ocean freight were provided directly by market economy companies and paid for in a market economy currency, we deducted the values reported by the respondents for these services.

We calculated CEP based on the packed, ex-warehouse prices from the U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for international freight, foreign brokerage and handling, foreign inland freight, marine insurance, customs duties, U.S. brokerage, U.S. inland freight insurance and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we made further deductions from the starting price for CEP for the following selling expenses that related to economic activity in the United States: Commissions to unaffiliated agents; credit expenses; indirect selling expenses, including inventory carrying costs; and repacking in the United States. In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production (''FOP'') methodology if: (1) The merchandise is exported from an NME, and (2) the information does not permit the calculation of NV under section 773(a) of the Act. The Department has treated the PRC as a non-market economy (''NME'') in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC TRB industry is a market-oriented industry. Consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and section 351.408(c) of our regulations.

Similarly, we used factors data to calculate NV for Premier. Section 773(a)(3)(A) of the Act provides that when the merchandise is sold to the United States from an intermediate country, and the producer of subject merchandise knows, at the time of the sale, that its merchandise is destined for exportation, NV may be determined in the country of origin of the subject merchandise. Accordingly, we calculated NV for Premier on the basis of PRC production usage rates and surrogate country factor values.

Under the FOP methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We chose India as the surrogate on the basis of the criteria set out in section 351.408(b) of our regulations. *See* the January 31, 2000, Memorandum to Susan Kuhbach from Jeff May ''Tapered Roller Bearings from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection,'' and the June 29, 2000, Memorandum to Susan Kuhbach ''Selection of a Surrogate Country and Steel Value Sources'' (''Steel Values Memorandum'') for a further discussion of our surrogate selection. We selected Indonesia as a second-choice surrogate based on the same criteria. *Id.* We note that, in past reviews of this and other orders, we have found that both India and Indonesia are significant producers of TRBs (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837, 61840 (November 15, 1999) (''*TRBs XI*'') and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Romania; Preliminary Results of Antidumping Administrative Review*, 63 FR 11217 (March 6, 1998)).

We used publicly available information on Indian imports and exports to India to value the various factors with the exception of the following: Cold-rolled steel rods used in the production of rollers and steel scrap from the production of rollers. To value cold-rolled steel rods used in the production of rollers we used publicly available Indonesian import data. We used these data because we found the Indian data for those inputs to be unreliable. (*See* Steel Values Memorandum.) We valued steel scrap

from the production of rollers using Indonesian data in order to value it consistently with the steel used to produce the rollers.

We valued factors as follows (for a complete description of the factor values used, *see* the Memorandum to Susan Kuhbach: ''Factors of Production Values Used for the Preliminary Results,'' dated June 29, 2000):

1. Steel Inputs. For hot-rolled alloy steel bars used in the production of cups and cones, consistent with *TRBs XI*, we used a weighted average of Japanese export values to India from the Harmonized Schedule (''HS'') category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. For cold-rolled steel rods used in the production of rollers, we used Indonesian import data under Indonesian tariff subheading 7228.50000 obtained from *Badan Pusat Statistik, Republik Indonesia.* For cold-rolled steel sheet for the production of cages, we used Indian import data under Indian tariff subheading 7206.1600 obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports.* (For further discussion of selection of steel value sources, *see* Steel Values Memorandum.)

As in previous administrative reviews, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, and rollers, we also excluded imports from countries that do not produce bearing-quality steel (*see, e.g., TRBs XI*). We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory (*see Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997), and *Sigma Corporation* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997)).

Certain producers in this review purchased steel from market economy suppliers and paid for the steel with market economy currency. Thus, in accordance with section 351.408(c)(1) of our regulations, we valued all appropriate steel inputs using the actual price reported for directly imported inputs from a market economy. For all other steel inputs, we used a surrogate to value that steel.

We valued scrap recovered from the production of cups and cones using Indian import statistics from HS category 7204.2909. We valued scrap recovered from the production of rollers using Indonesian import data from Indonesian tariff category 7204.29000. Scrap recovered from the production of cages was valued using import data from the Indian tariff subheading 7204.4100.

2. Labor. Section 351.408(c)(3) of our regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate on Import Administration's internet website at www.ita.doc.gov/import_admin/records/wages.

3. Overhead, SG&A Expenses, and Profit. For factory overhead, we used information obtained from the fiscal year 1998–99 annual reports of five Indian bearing producers. We calculated factory overhead and selling, general and administrative (''SG&A'') expenses (exclusive of labor and electricity) as percentages of direct inputs (also exclusive of labor) and applied these ratios to each producer's direct input costs. For profit, we totaled the reported profit before taxes for the five Indian bearing producers and divided it by the total calculated cost of production (''COP'') of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. Packing. As we did in *TRBs XI (see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1997–1998 Antidumping Duty Administrative Review and Partial Recission of Antidumping Duty Administrative Review*, 64 FR 36853 (July 8, 1999)), for producers that participated in the 1996–1997 review, except for Wafangdian, we calculated packing costs as a percentage of COP for each respondent based on the information submitted in that review. This ratio was applied to the respondents' COP for the current review to derive a POR-specific, company-specific packing expense. Consistent with *TRBs XI*, we calculated the value of packing materials by using Indian import statistics concurrent with the POR from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports* for (1) producers that did not participate in that review and do not have a packing cost percentage already calculated, and (2) Wafangdian since it reported different packing materials from those reported in the 1996–1997 review. We then multiplied these figures by the usage factor reported by the company to calculate company-specific packing costs.

5. Electricity. Consistent with our approach in *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 30067 (May 10, 2000), we calculated our surrogate value for electricity based on a simple average of rates across all Indian states, using the most contemporaneous electricity rate data from the Centre for Monitoring Indian Economy and the *1995 Conference of Indian Industries: Handbook of Statistics.* For each Indian state's rate, we inflated the value from the effective date of the rate quote to the POR using the electricity-specific price index published by the Reserve Bank of India.

6. Inland Freight. We valued truck freight using an average of November 1999 truck freight rate quotes collected from Indian trucking companies by the Department and used in the *Notice of Preliminary Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 116 (January 3, 2000) (''*Bulk Aspirin from the PRC*''). We valued rail freight using two November 1999 rate quotes for domestic bearing quality steel shipments within India that were also used in *Bulk Aspirin from the PRC.* We adjusted the rates for both truck and rail freight to the POR using wholesale price indices (''WPI'').

7. Ocean Freight. We calculated a value for ocean freight based on July 1996 rate quotes from Maersk Inc. We adjusted the ocean freight rate to the POR using the U.S. purchase price index.

8. Marine Insurance. We calculated a value for marine insurance based on the CIF value of shipped TRBs. We obtained the rate used through queries we made directly to an international marine insurance provider.

9. Brokerage and Handling. We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering in the *Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 12209 (March 8, 2000). Because this information is contemporaneous with the current POR, no adjustments were necessary.

Torch Spark Plug

Torch shipped TRBs to an affiliated Canadian party during the POR. According to Torch, the TRBs were originally intended for shipment to Canada. However, they entered the United States and, according to Torch, were erroneously categorized as consumption entries. Torch has provided documentation demonstrating that the merchandise has not been sold to an unaffiliated party in the United

States. In situations where an affiliated importer enters merchandise during a review period, but does not sell that merchandise during the POR, our normal practice is to liquidate the entries based on other sales of the merchandise made by the affiliated importer during the POR [1]. In this case, however, the company has indicated that it does not intend to sell this merchandise in the United States. Consequently, we would have no basis to calculate a dumping margin for this merchandise. Accordingly, we intend to liquidate the merchandise in question without regard to any dumping liability if certain requirements are met. For a further discussion of this issue, please see the Memorandum to Susan Kuhbach from Team: ''Review of Zhuzhou Torch Spark Plug Company, Ltd.,'' dated June 29, 2000.

Revocation

Pursuant to 19 CFR 351.222(e)(1), CMC, Wafangdian, Wangxiang, and ZMC requested revocation of the antidumping duty order, in part, based on an absence of dumping for at least three consecutive years. In accordance with 19 CFR 351.222(e), these companies' requests were accompanied by certifications that they had not sold the subject merchandise at less than normal value during the current period of review and would not do so in the future. They further certified that they sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. The companies also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the revocation, the companies sold the subject merchandise at less than normal value.

In light of the above and pursuant to 19 CFR 351.222, as amended by *Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders,* 64 FR 51236 (September 22, 1999), we preliminarily find for CMC, Wangxiang, and ZMC that the subject merchandise was sold at not less than normal value for a period of at least three consecutive years and that dumping is not likely to resume in the future and consequently the continuing imposition of an antidumping duty is not necessary to offset dumping. Therefore, we preliminarily find that these three companies qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b) and intend to revoke the order in part with respect to these companies in our final results. As indicated below, we preliminarily find that a dumping margin exists for Wafangdian. As such, we preliminarily find that Wafangdian does not qualify for revocation.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 1998, through May 31, 1999:

Manufacturer/exporter	Margin (percent)
Wafangdian	4.54
Wangxiang	0.00
CMC	0.00
ZMC	0.00
Liaoning	0.00
Hailin	0.00
Weihai	0.00
Luoyang	4.16
Premier	5.27
PRC Rate	33.18

Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to EP sales for these preliminary results, we divided the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the order during the review period.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's/customer's entries during the review period.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with de minimis rates, *i.e.*, less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.12 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

[1] *Silicon Metal from Brazil; Final Results of Antidumping Duty Administration {sic} Review*, 61 FR 46763 (September 5, 1996).

Dated: June 29, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17246 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–812]

Grain-Oriented Electrical Steel From Italy; Preliminary Results of Countervailing Duty Administrative Review and Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on grain-oriented electrical steel from Italy for the period January 1, 1998 through December 31, 1998. For information on the net subsidy for the reviewed company, as well as for all non-reviewed companies, see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Darla Brown, Office of AD/CVD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1994, the Department published in the **Federal Register** (59 FR 29414) the countervailing duty order on grain-oriented electrical steel from Italy. On June 9, 1999, the Department published a notice of ''Opportunity to Request Administrative Review of Grain-Oriented Electrical Steel from Italy'' (64 FR 30962). We received a timely request to conduct a review from Acciai Speciali Terni S.p.A. (AST). We initiated the review covering the period January 1, 1998 through December 31, 1998 on July 29, 1999 (64 FR 41075).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers AST. This review also covers 21 programs.

On January 20, 2000, the Department extended the period for completion of the preliminary results pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). *See Grain-Oriented Electrical Steel from Italy: Extension of Preliminary Results of Countervailing Duty Administrative Review,* 65 FR 3206 (January 20, 2000).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. In addition, unless otherwise indicated, all citations to the Department's regulations reference 19 CFR part 351 (1999).

Scope of the Review

Imports covered by this review are shipments of grain-oriented electrical steel from Italy, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness. The products covered by this review are provided for under the following item numbers of the Harmonized Tariff Schedule of the United States (HTSUS): 7225.10.0030, 7226.10.1030, 7226.10.5015, and 7226.10.5065. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Corporate History of AST

Prior to 1987, Terni Societa' per l'Industria e l'Elettricita' S.p.A. (Terni), an operating company within the Finsider S.p.A. (Finsider) group, produced electrical steel. Finsider was a holding company that controlled all state-owned steel companies in Italy. Finsider, in turn, was wholly-owned by a government holding company, Instituto per la Ricostruzione Industriale (IRI). During 1987, Finsider was restructured into four main operating companies: Terni Acciai Speciali S.p.A. (TAS) (flat-rolled stainless steel, electrical steel); Italsider S.p.A. (carbon steel flat-rolled products); Nuova Deltasider S.p.A. (long products) and Dalmine S.p.A. (pipe and tube). During the restructuring, Terni's steel facilities, including electrical steel were transferred to the newly formed TAS.

In 1988, the Government of Italy (GOI) submitted a new restructuring plan for the steel industry to the European Commission (EC) for approval. Under this plan, which was approved in December 1988, Finsider and its main operating companies (TAS, Italsider S.p.A., and Nuova Deltasider S.p.A.) entered into liquidation and a new company, ILVA S.p.A. (ILVA) was created with some of the assets and liabilities of the liquidating companies. The plan also envisioned the closure of certain plants and the sale of others to private investors, which was carried out by ILVA between 1990 and 1992. With respect to TAS, some of its liabilities, as well as its manufacturing and other assets were transferred to ILVA on January 1, 1989, except for the production of forgings, round bars, and pressure vessels, which remained with TAS in liquidation until April 1, 1990. On April 1, 1990, these production units and certain additional liabilities were also transferred to ILVA. After that date, TAS no longer possessed any operating assets; only certain non-operating assets remained in TAS.

From 1989 to 1993, ILVA S.p.A. consisted of several operating divisions: Carbon Steel Flat Products; Pipe Division; Long Products Division; and the Specialty Steel Division located in Terni, which produced electrical steel. In addition to these operating divisions, the ILVA S.p.A. was the majority owner of a large number of separately incorporated subsidiaries. Some of these subsidiaries produced various types of steel products. Others constituted service centers, trading companies, and an electric power company, among others. ILVA S.p.A. together with its subsidiaries constituted the ILVA Group, which was wholly-owned by IRI. All subsidies received prior to 1994 were received by ILVA or its predecessors.

In September 1993, IRI endorsed a plan for the reorganization and privatization of the ILVA Group through the splitting of ILVA's core business into two new companies, and the rest of the ILVA Group was to be known as ILVA Residua (a.k.a., ILVA in

Liquidation). In accordance with the plan, on December 31, 1993, the Terni division of ILVA was separately incorporated by a demerger of ILVA into Acciai Speciali Terni S.r.l. (AST S.r.l.) (specialty steel), and ILVA Laminati Piani S.R.l. (ILP) (carbon steel flat products). The remainder of ILVA's assets and existing liabilities, as well as much of the redundant workforce, were transferred to ILVA Residua.

On December 31, 1993, AST S.r.l. was established as a separate corporation, with all shares initially owned by IRI. At approximately the same time, a public offering for the sale of AST S.r.l. was made. In preparation for the sale of AST, IRI converted AST S.r.l. from a limited liability company (S.r.l.) to a stock company (S.p.A.) on February 11, 1994. On July 14, 1994, a purchase agreement was signed by IRI and KAI Italia S.r.l. (KAI), a privately-held holding company jointly owned by German steelmaker Krupp AG Hoesch-Krupp and a consortium of private Italian companies called FAR Acciai S.r.l., subject to approval by the EC. The EC's approval was granted on December 21, 1994 , with shares formally changing hands effective December 23, 1994. As of that date, the GOI no longer maintained any ownership interest in AST or its new owners.

In December 1994, AST was sold to KAI. Between 1995 and 1998, there were several restructurings/changes in ownership of AST and its parent companies. As a result, at the end of the POR, AST was owned 90 percent by Krupp Thyssen Stainless GmbH (part of the Krupp AG Hoesch-Krupp group) and 10 percent by Fintad Securities S.A., a private Italian company.

Change in Ownership

The Department is aware that on June 20, 2000, the Court of Appeals for the Federal Circuit (CAFC) denied the Department's petition for rehearing and suggestion for rehearing *en banc* in *Delverde, SRL* v. *United States,* 202 F.3d 1360 (Fed. Cir. 2000) (*Delverde*). Although this decision addressed a purely private change in ownership, it appears that it may impact the Department's privatization methodology. However, because the CAFC's decision denying a rehearing was only issued one week before these preliminary results, the Department has not had a sufficient opportunity to determine how *Delverde* may affect this proceeding. Accordingly, for purposes of these preliminary results, we will continue to determine that a portion of subsidies bestowed on a government-owned company prior to privatization continues to benefit the production of the privatized company, as set forth below.

The Department invites interested parties to comment in their case briefs on the implications of this proceeding, if any, of the *Delverde* decision.

In the General Issues Appendix (GIA), appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37225 (July 9, 1993) (*Certain Steel from Austria*), we set forth the methodology applied to the treatment of subsidies received prior to the sale of a government-owned company to a private entity (*i.e.,* privatization), or the spin-off (*i.e.,* sale) of a productive unit from a government-owned company to a private entity.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We do this by first dividing the sold company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the period of review (POR) and ending one year prior to the sale of the company. We then take the simple average of these ratios. This average serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. Next, we multiply this ratio by the purchase price to derive the portion of the purchase price attributable to the payment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time the company is sold. *See id.* at 37263.

With respect to the spin-off of a productive unit, consistent with the Department's methodology set out above, we analyze the sale of a productive unit to determine what portion of the sales price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. The result of this calculation yields the amount of remaining subsidies attributable to the spun-off productive unit. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the methodology set out above, and deduct it from the maximum amount of subsidies that could be attributable to the spun-off productive unit. *Id.* at 37269.

Extension of Final Results

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period for the final results to 180 days. Due to the complex nature of the issues in this case, we have determined that it is not practicable to complete the final results for this review within the original time limit. Therefore, the Department is extending the time limit for the final results to 180 days from the date of publication of the preliminary results.

Subsidies Valuation Information

Allocation Period

AST was investigated in two recent countervailing duty investigations. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy,* 64 FR 30624, 30627 (June 8, 1999) (*Stainless Sheet and Strip*); *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy,* 64 FR 15508, 15511, 15520 (March 31, 1999) (*Stainless Plate in Coils*). In those investigations, the Department allocated subsidies received by AST using a 12-year average useful life (AUL). The same subsidies being investigated in this current review of AST were also investigated in *Stainless Sheet and Strip* and *Stainless Plate in Coils.* Therefore, we preliminarily determine that it is reasonable to maintain the same 12-year allocation period for the identical subsidies received by AST.

Equityworthiness

In prior investigations and reviews, we found ILVA/AST's predecessor companies unequityworthy from 1984 through 1988, and from 1991 through 1992. *See, e.g., Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy,* 59 FR 18357, 18358 (April 18, 1994) (*Electrical Steel*); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy,* 58 FR 37327, 37328 (July 9, 1993) (*Certain Steel*), *Stainless Plate in Coils,* 64 FR at 15511, and *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy,* 63 FR 40474, 40477 (July 29, 1998) (*Wire Rod*). No new

information or evidence of changed circumstances have been submitted in this review that would lead us to reconsider these findings.

Section 351.507(a)(3) of the Department's regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with usual investment practices of private investors. In such cases, the Department will then apply the methodology described in section 351.507(a)(6) of the regulations, and treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993), and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela,* 62 FR 55014, 55018 (October 21, 1997). The Department will consider a firm to be uncreditworthy if it is determined that, based on information available at the time of the government-provided loan, the firm could not have obtained a long-term loan from conventional sources. *See* 19 CFR 351.505(a)(4)(i).

TAS and ILVA were found to be uncreditworthy from 1986 through 1993. *See Electrical Steel,* 59 FR at 18358; *Stainless Plate in Coils,* 64 FR at 15511; *Wire Rod,* 63 FR at 40477. No new information has been presented in this review that would lead us to reconsider these findings. Therefore, consistent with our past practice, we continue to find TAS and ILVA uncreditworthy from 1986 through 1993. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil,* 58 FR 37295, 37297 (July 9, 1993). We did not analyze AST's creditworthiness in the years 1994 through 1998, because the company did not negotiate new loans with the GOI or the EC during these years, nor did it receive any new subsidies that were allocated over time.

Benchmarks for Long-Term Loans and Discount Rates

Consistent with the Department's finding in *Wire Rod,* 63 FR at 40476–77, *Stainless Plate in Coils,* 64 FR at 15510, and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Italy,* 64 FR 73244, 73247–48 (December 29, 1999) *(CTL Plate),* we have based our discount rates on the Italian Bankers' Association (ABI) rates. The ABI rate is the average of the short-term interest rates on overdraft facilities commercial banks charge to the segment of high quality borrowers. In calculating the interest rate applicable to a borrower, commercial banks typically add a spread ranging from 0.55 percent to 4.0 percent onto the ABI rate, which is determined by the company's financial health.

In *CTL Plate,* we found that the published ABI rates do not include amounts for fees, commissions, and other borrowing expenses. However, information on the borrowing expenses on overdraft loans for 1998, which was placed on that record, was used as an approximation of expenses on long-term commercial loans. That information shows that expenses on overdraft loans range from 6.0 to 11.0 percent of interest charged. Such expenses, along with the applied spread, raise the effective interest rate that a company would pay. *CTL Plate,* 64 FR at 73248. Because it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates. *See* 19 CFR 351.505(a)(1). Therefore, we have added the average of the spread (*i.e.,* 2.28 percent) and borrowing expenses (*i.e.*, 8.5 percent of the interest charged) to the yearly ABI rates to calculate the effective discount rates.

For the years in which AST or its predecessor companies were uncreditworthy (*see ''Creditworthiness''* section above), we calculated discount rates in accordance with the formula for constructing a long-term benchmark interest rate for uncreditworthy companies as stated in section 351.505(a)(3)(iii) of the Department's regulations. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the weighted-average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920—1997'' (February 1998).[1] For the probability of default by a creditworthy company, we used the weighted-average cumulative default rates reported for the Aaa to Baa-rated categories of companies in the study. For non-recurring subsidies, we based the average cumulative default rates for both uncreditworthy and creditworthy companies on a 12-year term, since all of AST's allocable subsidies were based on this allocation period.

In addition, AST had one long-term, fixed-rate loan under ECSC Article 54 outstanding during the POR, denominated in U.S. dollars. Therefore, we have selected a U.S. dollar-based interest rate as our benchmark. *See* 19 CFR 351.505(a)(2)(i). Consistent with *Wire Rod,* 63 FR at 40486, and *CTL Plate,* 64 FR at 73248, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since the loan was denominated in U.S. dollars. We used these rates since we were unable to find a long-term borrowing rate for loans denominated in U.S. dollars in Italy. Because ILVA was uncreditworthy in the year the loan was contracted, we calculated the uncreditworthy benchmark rate pursuant to section 351.505(a)(3)(iii) of the Department's regulations.

I. Programs Preliminarily Determined To Be Countervailable Government of Italy Programs

A. *Equity Infusions to TAS and ILVA.*—The GOI, through IRI, provided new equity capital to TAS or ILVA between 1987 and 1992 (although there were no allegations of equity infusions in 1989 and 1990). These equity infusions were found countervailable in *Electrical Steel* and *Stainless Plate in Coils.* No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. For equity infusions originally provided to TAS, the predecessor company to ILVA that produced electrical steel, we treated these equity infusions as though they had flowed directly through ILVA to AST when the specialty steel (including subject merchandise) assets were transferred from ILVA to AST. *See Electrical Steel,* 59 FR at 18360; *Stainless Plate in Coils,* 64 FR at 15511–12.

[1] We note that since publication of the regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication dated February 1998.

We have treated these equity infusions as non-recurring grants given in the year the infusion was received because each required a separate authorization. We allocated the equity infusions over a 12-year AUL. Because TAS and ILVA were uncreditworthy in the years the equity infusions were received, we constructed uncreditworthy discount rates to allocate the benefits over time. *See ''Subsidies Valuation Information''* section, above.

We applied the repayment portion of our change in ownership methodology to all of the equity infusions described above to determine the subsidy allocable to AST after its privatization. We divided this amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 0.97 percent *ad valorem* for AST.

B. *Debt Forgiveness: 1988–90 Restructuring Plan.*—As discussed above in the *''Corporate History''* section of this notice, the GOI liquidated Finsider and its main operating companies, including TAS, in 1988 and assembled the group's most productive assets into a new operating company, ILVA. Although most of TAS's productive assets were transferred to ILVA, not all of its liabilities were transferred; rather, many liabilities remained with TAS which had to be repaid, assumed or forgiven. In 1990, additional assets and liabilities of TAS, Italsider and Finsider were transferred to ILVA. *See Electrical Steel,* 59 FR at 18359; *Stainless Plate in Coils,* 64 FR at 15508–09; *CTL Plate,* 64 FR at 73249.

In 1989, IRI forgave 99,886 million lire owed to Finsider by TAS. *See Electrical Steel,* 59 FR at 18359. Even with this debt forgiveness, a substantial amount of liabilities remained with TAS. In addition, losses associated with the transfer of assets to ILVA were left behind in TAS. These losses occurred because the value of the transferred assets had to be written down. As TAS gave up assets whose book value was higher than their appraised value, it was forced to absorb the losses. These losses were generated during two transfers as reflected in: (1) An extraordinary loss in TAS's 1988 Annual Report and (2) a reserve account created in 1989 for anticipated losses with respect to the 1990 transfer.

In *Electrical Steel, Stainless Plate in Coils,* and *CTL Plate,* we determined that the debt and loss coverage provided to ILVA in 1989 and 1990, constituted countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To determine the benefit from these subsidies, we have treated IRI's forgiveness of TAS's 1989 debt owed to Finsider and the loss resulting from the 1989 write-down as grants received in 1989. The second asset write-down and the debt outstanding after the 1990 transfer were treated as grants received in 1990. We treated these as non-recurring grants because the company did not receive them on an on-going basis. Because ILVA was uncreditworthy in 1989 and 1990, the years in which the assistance was provided, we used constructed uncreditworthy discount rates to allocate the benefits over time. We allocated the debt coverage provided in 1989 and 1990, over a 12-year AUL. *See* the *''Subsidies Valuation Information''* section, above.

We applied the repayment portion of our change in ownership methodology to the debt forgiveness and loss coverage to determine the amount of the subsidy allocable to AST after its privatization. We divided this amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 2.66 percent *ad valorem* for AST.

C. *Debt Forgiveness: 1993–1994 Restructuring Plan.*—As mentioned in the *''Corporate History''* section above, in September 1993, IRI endorsed a plan for the reorganization and privatization of the ILVA Group, which was submitted to the EC for its approval. The reorganization provided for splitting ILVA's core business into two new companies, AST and ILP, and placing the remaining assets, as well as liabilities and redundant workers in ILVA Residua. Under the restructuring plan, ILVA Residua would sell the productive units, use the proceeds to reduce ILVA's debt prior to liquidation, and IRI (i.e., the Italian government) would absorb any remaining debt.

As of December 31, 1993, the majority of ILVA's viable manufacturing activities had been separately incorporated (or ''demerged'') into either AST or ILP, thus, ILVA Residua became essentially a shell company with liabilities far exceeding assets. In contrast, AST and ILP, now ready for privatization, had operating assets and relatively modest debt loads. The EC approved the GOI's restructuring and privatization plan for ILVA in its Commission Decision 94/259/ECSC, dated April 12, 1994. This EC decision states that IRI would take over ILVA Residua's residual indebtedness, cover expenditures of 1,197 billion lira, and continue to be involved in ILVA Residua's activities until its liquidation. It further states that if the privatization and reorganization program was strictly implemented, the ILVA group, namely AST and ILP would have a reasonable chance of being viable by the end of 1994. *See Stainless Plate in Coils,* 64 FR at 15512; *CTL Plate,* 64 FR at 73251.

In *Stainless Plate in Coils* and *Stainless Sheet and Strip,* we determined that AST received a countervailable subsidy in 1993, when the majority of ILVA's debt was placed in ILVA Residua, rather than being proportionately allocated to AST and ILP. *See Stainless Plate in Coils,* 64 FR at 15512; *Stainless Sheet and Strip,* 64 FR at 30628. In addition to the debt that was placed in ILVA Residua, we determined that the asset write-downs which ILVA took in 1993, as part of the restructuring/privatization plan, were countervailable subsidies under section 771(5)(B)(i) of the Act. The write-down of the assets in 1993 increased the losses to be covered in liquidation. It is the Department's position that when losses, which are later covered by a government, can be tied to specific assets, those assets bear the liability for the losses that resulted from the write-downs. No new information or evidence of changed circumstances has been submitted in this review that would warrant reconsideration of these findings. *See also, CTL Plate,* 64 FR at 73251.

The amount of debt and losses resulting from the asset write-downs that should have been attributable to AST, but were instead placed with ILVA Residua, was equivalent to debt forgiveness for AST at the time of the ILVA demerger. In accordance with our practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt forgiveness.

In *CTL Plate,* we determined that the liquidation process of ILVA did not occur under the normal application of a provision of Italian law and, therefore, the debt forgiveness is *de facto* specific under section 771(5A)(D)(iii)(II) of the Act. *See CTL Plate,* 64 FR at 73252. As stated above, the liquidation of ILVA was done in the context of a massive restructuring/privatization plan of the Italian steel industry undertaken by the GOI and approved and monitored by the EC. Because ILVA's liquidation was part of an extensive state-aid package to privatize the Italian state-owned steel industry, and the debt forgiveness was received by only privatized ILVA operations, we determined that the assistance provided under the 1993–

1994 Restructuring Plan was *de facto* specific. *See CTL Plate,* 64 FR at 73252.

Consistent with the methodology that we employed in *Stainless Plate in Coils,* 64 FR at 15513, *Stainless Sheet and Strip,* 64 FR at 30628, and *CTL Plate,* 64 FR at 73252, the amount of liabilities that we attributed to AST is based on the gross liabilities left behind in ILVA Residua, as reported in the EC's 10th Monitoring Report.[2] In calculating the amount of unattributable liabilities remaining after the demerger of AST, we started with the most recent ''total comparable indebtedness'' amount from the 10th Monitoring Report, which represents the indebtedness, net of debts transferred in the privatization of ILVA Residua's operations and residual asset sales, of a theoretically reconstituted, pre-liquidation ILVA. In order to calculate the total amount of unattributed liabilities which amounted to countervailable debt forgiveness, we made adjustments (additions/subtractions) to this figure for the following: the residual assets that had not actually been liquidated as of the 10th and final Monitoring Report; assets that comprised SOFINPAR, a real estate company (because these assets were sold prior to the demergers of AST and ILP); the liabilities transferred to AST and ILP; income received from the privatization of ILVA Residua's operations; the amount of the asset write-downs specifically attributable to AST, ILP, and ILVA Residua companies; and the amount of debts transferred to Cogne Acciai Speciali (CAS), an ILVA subsidiary that was left behind in ILVA Residua and later spun-off, as well as the amount of ILVA's debt attributed to CAS and countervailed in *Wire Rod,* 63 FR at 40478.

The amount of liabilities remaining represents the pool of liabilities that were not individually attributable to specific ILVA assets. We apportioned this debt to AST, ILP, and operations sold from ILVA Residua based on their relative asset values. We used the total consolidated asset values reported in AST's and ILP's financial statements for the year ending December 31, 1993. For ILVA Residua, we used the sum of the purchase price plus debts transferred as a surrogate for the viable asset value of the operations sold from ILVA Residua. Because we subtracted a specific amount of ILVA's gross liabilities attributed to CAS in *Wire Rod,* we did not include its assets in the amount of ILVA Residua's privatized assets. Also, we did not include in ILVA Residua's viable assets the assets of the one ILVA Residua company sold to IRI, because this sale does not represent sales to a non-governmental entity.

We have treated the debt forgiveness to AST as a non-recurring subsidy because it was a one-time, extraordinary event. The discount rate we used in our grant formula was a constructed uncreditworthy benchmark rate based on our determination that ILVA was uncreditworthy in 1993. *See ''Benchmarks for Long-Term Loans and Discount Rates''* and *''Creditworthiness''* sections, above. We followed the methodology described in the *''Change in Ownership''* section above to determine the amount appropriately allocated to AST after its privatization. We divided this amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 7.74 percent *ad valorem* for AST.

D. *Interest Contributions on IRI Loans/Bond Issues Under Law 675/77.*—Law 675/77 was designed to provide GOI assistance in the restructuring and reconversion of Italian industries. There are six types of assistance available under this law: (1) Grants to offset interest payable on bank loans; (2) mortgage loans provided by the Ministry of Industry (MOI) at subsidized interest rates; (3) grants to reduce interest payments on loans financed by IRI bond issues; (4) capital grants for the South; (5) value-added taxed (VAT) reductions on capital good purchases for companies in the South; and (6) personnel retraining grants.

Under Law 675/77, IRI issued bonds to finance restructuring measures of companies within the IRI group. The proceeds from the sale of the bonds were lent to IRI companies. During the POR, AST had long-term variable interest rate loans outstanding that were financed by IRI bond issues for which the effective interest rate was reduced by interest contributions made by the GOI.

The Department previously found this program to be countervailable in *Electrical Steel,* 59 FR at 18361 and *Stainless Plate in Coils,* 64 FR at 15513. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To measure the benefit from these loans, we compared the amount of interest that should have been paid at the benchmark interest rate to the amounts paid by AST, less the interest rebates claimed during the POR. We divided the resulting difference by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 0.09 percent *ad valorem.*

E. *Pre-Privatization Retirement Benefits Under Law 451/94.*—Law 451/94 authorized early retirement packages for steel workers for the years 1994 through 1996. The law entitled men of at least 50 years of age and women of 47 years of age with at least 15 years of pension contributions to retire early. Benefits applied for during the 1994–1996 period continue until the employee reaches his/her natural retirement age, up to a maximum of ten years.

In *Wire Rod,* 64 FR at 40480, *Stainless Plate in Coils,* 64 FR at 15514, and *CTL Plate,* 64 FR at 73253, we found this program to be specific, and thus countervailable. In *CTL Plate* and *Stainless Plate in Coils,* the Department stated that at the time the agreement was being reached with the unions and the labor ministry on the terms of the lay offs, ILVA and its workers were aware that government contributions would ultimately be made to workers benefits. In such situations, *i.e.,* where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's practice is to treat half of the amount paid by the government as benefitting the company. *See Countervailing Duties; Final Rule,* 63 FR 65348, 65380 (November 25, 1998). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Consistent with the Department's practice with regard to allocation of worker-related subsidies, we have treated benefits to AST under Law 451/94 as recurring grants expensed in the year of receipt. *See Stainless Plate in Coils,* 64 FR at 15515; *Wire Rod,* 64 FR at 40480. To calculate the benefit received by AST during the POR, we multiplied the number of AST employees by employee type (blue collar, white collar, and senior executive) who retired early by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to AST. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by AST's total consolidated sales during the POR. On

[2] In *CTL Plate,* 64 FR at 73252, we stated that we would prefer to base our calculation on information at the time the relevant portion of ILVA's assets were demerged. However, the information contained in ILVA's financial statement was found to be unreliable by the company's auditors. Therefore, as facts otherwise available, we used the information contained in the EC's 10th Monitoring Report which provides the most reliable data for determining the benefit conferred by this program.

this basis, we preliminarily determine a net countervailable subsidy of 0.69 percent *ad valorem.*

As mentioned in the ''*Corporate History*'' section of this notice, in September 1993, IRI endorsed a plan for the reorganization and privatization of the ILVA Group. In December 1993, IRI initiated the splitting of ILVA's main productive assets into two new companies, ILP and AST. On December 31, 1993, ILP and AST became separately incorporated firms. The remainder of ILVA's productive assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua. The GOI issued two decrees under Law 451 to place the early retirees from ILVA into ILVA Residua. In *CTL Plate,* the Department found that by the GOI placing much of the redundant workforce in ILVA Residua, ILP and AST were able to begin their respective operations with a relatively ''clean slate'' in advance of their privatizations. ILP and AST were relieved of having to assume their respective portions of those redundant workers that were placed in ILVA Residua and received early retirement benefits under Law 451/94. *See CTL Plate*, 64 FR at 73254. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, we preliminarily determine that AST has received a countervailable benefit since the company was relieved of a financial obligation that would otherwise have been due.

To calculate the benefit received by AST during the POR, for retired employees that were placed with ILVA Residua under the first decree dated December 7, 1994, we first multiplied the number of employees according to worker type (*i.e.,* blue collar) times the average salary for each employee type, using the same average salaries for AST employees. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to AST. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by AST's total consolidated sales during the POR.

The GOI allocated additional slots to workers in ILVA Residua under a second decree dated December 30, 1996. However, the number of workers attributable to AST or the worker types were not submitted in the questionnaire responses. Therefore, we first needed to determine the appropriate number of early retirees placed in ILVA Residua that should have been apportioned to AST. To determine this number, we took the asset value of AST in relation to the asset value of ILVA at the time of the spin-off of AST. Next, we multiplied this percentage by the total number of ILVA Residua early retirees, pursuant to the second decree. It was then necessary to estimate the number of employees according to worker types. To do this, we calculated the ratio of employees according to worker types under the first decree. We then multiplied the number of employees according to worker type (*i.e.,* blue collar) times the average salary for each employee type, and multiplied the result by 40 percent. We then divided this total amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine a net countervailable subsidy attributable to AST for the retirees placed with ILVA Residua under both decrees to be 0.13 percent *ad valorem.* Therefore, we preliminarily determine the combined rate for retired employees placed directly with AST and those placed with ILVA Residua to be 0.82 percent *ad valorem.*

F. *Exchange Rate Guarantees under Law 796/76.*—Law 796/76 established the exchange risk guarantee on foreign currency loans program to minimize the risk of exchange rate fluctuations on loans contracted in foreign currency. All firms that contract foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CERF) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculates loan payments based on the lire-foreign currency exchange rate in effect at the time the loan is contracted (*i.e.,* the base rate). The program establishes a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent above or below the base rate. If the lire depreciates more than two percent against the foreign currency, a borrower is still able to purchase foreign currency at the established (guaranteed) ceiling rate. The MOT absorbs the loss in the amount of the difference between the guaranteed rate and the actual rate. If the lire appreciates against the foreign currency, the MOT realizes a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992, by Decree Law 333/92. However, the pre-existing exchange rate guarantees continue on any loans outstanding after that date. AST had outstanding ECSC loans during the POR that benefitted from these guarantees. The Department found this program to be countervailable in *Stainless Plate in Coils,* 64 FR at 15513, and *CTL Plate,* 64 FR at 73254. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we are treating the benefits under this program as recurring grants. AST and its predecessor companies from which these loans were transferred, paid a foreign exchange commission fee to the UIC for each payment made. We determine that this fee qualifies as an ''* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* section 771(6)(A) of the Act. Thus, for the purposes of calculating the countervailable benefit, we have added the foreign exchange commission to the total amount AST paid under this program during the POR. *See Wire Rod,* 63 FR at 40479; *Stainless Plate in Coils,* 64 FR at 15513; *CTL Plate,* 64 FR at 73255.

Under this program, we have calculated the total countervailable benefit as the difference between the total loan payment due in foreign currency, converted at the current exchange rate, less the sum of the total loan payment due in foreign currency converted at the guaranteed rate and the exchange rate commission. We divided this amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 0.12 percent *ad valorem.*

European Commission Programs

A. *ECSC Loans Under Article 54.*—Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the member iron and steel industries to finance modernization and purchase new equipment. Eligible companies apply directly to the EC (which administers the ECSC) for up to 50 percent of the cost of an industrial investment project. The Article 54 loans are generally financed on a ''back-to-back'' basis. In other words, upon granting loan approval, the ECSC borrows funds (through loans or bond issues) at commercial rates in financial markets which it then immediately lends to steel companies at a slightly higher interest rate. The mark-up is to cover the costs of administering the Article 54 program.

The Department has found Article 54 loans to be specific countervailable subsidies in several proceedings, including *Electrical Steel,* 59 FR at 18362, *CTL Plate,* 64 FR at 73256, and *Stainless Plate in Coils,* 64 FR at 15515, because loans under this program are provided only to iron and steel companies. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

AST had one long-term, fixed-rate U.S. dollar denominated loan outstanding during the POR. Consistent with *Wire Rod,* 63 FR at 40486 and *CTL Plate,* 64 FR at 73256, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since this loan was denominated in U.S. dollars. We used this rate because we were unable to find a long-term borrowing rate for loans denominated in U.S. dollars in Italy. The interest rate charged on AST's Article 54 loan, which was contracted in 1978 was reduced in 1987. Therefore, for the purpose of calculating the benefit, we have treated this loan as if it was contracted on the date of the rate adjustment. Because ILVA was uncreditworthy in the year this loan was contracted, 1987, we calculated the uncreditworthy benchmark rate as pursuant to section 351.505(a)(3)(iii) of the Department's regulations. *See* ''*Benchmark for Long-Term Loans and Discount Rates*'' section, above.

To calculate the benefit under this program, pursuant to section 351.505(c)(2) of the regulations, we employed the Department's long-term fixed-rate loan methodology. We compared the amount of interest that should have been paid at the benchmark interest rate for uncreditworthy companies to the amount paid by AST during the POR. We then divided the benefit by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 0.01 percent *ad valorem.*

B. *European Social Fund (ESF).*—The ESF, one of the Structural Funds operated by the EC, was established to improve workers' opportunities through training and to raise their standards of living throughout the community by increasing their employability. Like other EC structural funds, there are six different Objectives (sub-programs) identified under ESF: Objective 1 covers projects located in underdeveloped regions; Objective 2 addresses areas in industrial decline; Objective 3 relates to the employment of persons under 25; Objective 4 funds training for employees in companies undergoing restructuring; Objective 5 pertains to agricultural areas; and Objective 6 pertains to regions with very low population (*i.e.,* the far north).

During the POR, AST received ESF assistance under Objective 4. To qualify for Objective 4 funding, AST had to propose programs designed to re-train its workers to increase their productivity. The Department considers training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. In *Stainless Plate in Coils* and *Stainless Sheet and Strip,* the Department found this program to be countervailable. *See Stainless Plate in Coils,* 64 FR at 15516; *Stainless Sheet and Strip,* 64 FR at 30630. No new information or evidence of changed circumstances has been submitted in this review to warrant reconsideration of this finding.

The Department normally considers the benefits from worker training programs to be recurring. However, as determined in *Stainless Plate in Coils,* these grants relate to specific, individual projects which require separate government approval, therefore, the benefits under this program are treated as non-recurring grants. *See Stainless Plate in Coils,* 64 FR at 15517; *Wire Rod,* 63 FR at 40488; *see also Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy,* 61 FR 30288, 30295 (June 14, 1996) (*Pasta*). However, because the benefit received under this program is less than 0.5 percent of AST's sales during the relevant year, we have expensed these grants in the year of receipt. We divided the benefit by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 0.03 percent *ad valorem.*

III. Programs Preliminarily Determined To Be Not Used

1. Rotation Fund
2. Grants Under Law 10/81—Energy Conservation
3. Brite-EuRam Project Grants
4. Loan from IRI to KAI for the Purchase of AST
5. Lending from the Ministry of Industry under Law 675/77
6. Mortgage Loans from the Ministry of Industry Under Law 675/77
7. Personnel Retraining Grants under Law 675/77
8. Capital Grants under Law 675/77
9. Reductions of the VAT under Law 675/77
10. Worker Training under Law 181/89 (Early Retirement Provision)
11. Reindustrialization under Law 181/89
12. Law 488/92 Investment Grants
13. Subsidized Export Financing Under Law 227/77
14. Finsider Loans
15. Interest Subsidies under Law 617/81
16. Financing under Law 464/7
17. Interest Contributions under the Sabatini Law (Law 1329/65)
18. Social Security Exemptions
19. ILOR and IRPEG Exemptions
20. Law 345/92: Benefits for Early Retirement

Preliminary Results of Review

In accordance with section 777A(e)(1) of the Act, we calculated an individual *ad valorem* subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 1998 through December 31, 1998, we preliminarily determine the net subsidy for AST to be 12.44 percent *ad valorem.*

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties of 12.44 percent of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and the Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT

1993) (interpreting 19 CFR 353.22(e) (now 19 CFR 351.212(c)), the antidumping regulation on automatic assessment, which is identical to 19 CFR section 355.22(g). Therefore, the cash deposit rates for all companies, except those covered by this review, will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed segment of this administrative proceeding under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Electrical Steel,* 59 FR at 18357. These rates shall apply to all non-reviewed companies until a review is requested. In addition, for the period January 1, 1998 through December 31, 1998, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of countervailing 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 countervailing duties occurred and the subsequent assessment of double countervailing duties.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: June 29, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17248 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

ACTION: Notice of Scope Rulings and Anticircumvention Inquiries.

EFFECTIVE DATE: July 7, 2000.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings completed between October 1, 1998 and March 31, 2000. In conjunction with this list, the Department is also publishing a list of requests for scope determinations pending as of March 31, 2000. We intend to publish future lists within 30 days of the end of each quarter.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0374 or (202) 482–0649.

Background

The Department's regulations provide that, on a quarterly basis, the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months. See 19 CFR 351.225(o).

This notice covers all scope rulings and anticircumvention determinations completed by Import Administration between October 1, 1998 and March 31, 2000, inclusive. It also lists any scope or anticircumvention inquiries pending as of March 31, 2000. The Department intends to publish in July 2000 a list of all completed and pending scope and anticircumvention inquiries for the period April 1, 2000 and June 30, 2000; subsequent lists will follow in the month after the close of each calendar quarter.

Scope Rulings Completed Between October 1, 1998 and March 31, 2000

Belgium

A–423–805, C–423–806 Cut-To-Length Carbon Steel Plate; Duferco Steel Inc.; certain hot-rolled floor plate is within the scope; November 22, 1999.

Canada

C–122–805 New Steel Rail Except Light Rail; L.B. Foster Company; certain steel rail containing radial streaking is within the scope; July 22, 1999.

A–122–823 Certain Cut-to-Length Carbon Steel Plate; Clayson Steel, Inc.; certain dockleveler platforms are within the scope; December 13, 1999.

Chile

A–357–804 Certain Preserved Mushrooms; Coalition for Fair Preserved Mushroom Trade; retorted preserved mushrooms produced in third countries from provisionally preserved mushrooms produced in Chile are within the scope; July 13, 1999.

Germany

A–428–801 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Holland Hitch, Inc.; ''Turntable bearings'' (slewing rings, gearless slewing rings, or slewing bearings) are outside the scope; February 26, 1999.

A–428–816, C–428–817 Cut-to-Length Carbon Steel Plate; Novosteel, SA; profile slabs produced by Reiner Brach, GmbH, and Co., and sold by Novosteel SA are within the scope; May 18, 1999.

A–428–820 Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe; Chicago P.P.L., Inc.; tubing with circular cross-section and outside diameter that varies from 0.05mm to 25 mm is outside the scope; June 25, 1999.

India

A–533–806, C–533–806 Sulfanilic Acid; 3V Corporation; sodium sulfanilate processed in Italy from sulfanilic acid produced in India is within the scope; May 5, 1999.

Italy

A–475–818, C–475–819 Certain Pasta; self-initiated by the Department; pasta in packages weighing (or labeled as weighing) up to and including five pounds, four ounces is within the scope; May 24, 1999.

Japan

A–588–802 3½-Inch Microdisks and Coated Media Therefor; TDK Electronics Corp. (TKD); TDK's Ultra High-density disk is outside the scope; January 21, 1999.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Nissei Sangyo America, Ltd.; a certain vacuum nozzle assembly, designated as part number 630–063–2316 is outside the scope; January 19, 1999.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Sanden International (USA); certain orbiting and fixed races, and orbiting and fixed rings, used in a ''rotation prevention device'' in scroll compressors are outside the scope; December 14, 1999; see also 65 FR 18033, April 6, 2000.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Isuzu Motors America, Inc.; fan center assembly, designated as part number 8–97226–2892, imported by Isuzu for primary use as a production part of a V–8 diesel engine is outside the scope; March 13, 2000; see also 65 FR 18033, April 6, 2000.

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; steel coil with aluminum lining is within scope; March 15, 1999.

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; Uchiyama America, Inc.; steel flat products of specific dimensions and with specific zinc-cobalt-molybdenum coatings imported by Uchiyama are outside the scope (see the Department's Final Scope Ruling for a full description of the specific products at issue); March 29, 1999.

A–588–846 Certain Hot-Rolled, Flat-Rolled Carbon-Quality Steel Products; Mitsubishi International Steel, Inc.; cold-reduced steel sheets in coils exported from El Salvador are outside of the scope; April 24, 2000.

Mexico

A–201–805 Certain Circular Welded Non-Alloy Steel Pipe; Galvak, S.A. de C.V.; circular welded non-alloy steel pipe manufactured to ASTM A–787 specifications is within the scope; November 19, 1998.

People's Republic of China

A–570–504 Petroleum Wax Candles; Costco Wholesale; candles containing 81 percent beeswax and 19 percent petroleum wax are outside of the scope; December 10, 1998.

A–570–504 Petroleum Wax Candles; Et Al Imports, Inc.; candles containing 80 percent beeswax and 20 percent petroleum wax are outside of the scope; December 11, 1998.

A–570–504 Petroleum Wax Candles; Target Stores; citronella candle for outdoor use is outside of the scope; December 15, 1998.

A–570–504 Petroleum Wax Candles; Boston Warehouse; citronella candle for outdoor use is outside of the scope; December 18, 1998.

A–570–504 Petroleum Wax Candles; Ocean State Jobbers; candles consisting of 80 percent beeswax and 20 percent petroleum wax are outside of the scope; December 18, 1998.

A–570–504 Petroleum Wax Candles; Endar Corp.; floating round candles are within the scope; December 24, 1998.

A–570–504 Petroleum Wax Candles; Meijer, Inc.; wax-filled porcelain bunny is a wax filled container within the scope of the order; January 6, 1999.

A–570–504 Petroleum Wax Candles; Endar Corp.; 5-inch gold pillar candle is within the scope; six candles (red holiday floating candle, purple eight-points floating ''puck'' candle, white frosty snowball candle, 3-inch gold pine cone candle, white Christmas star candle, and green Christmas tree ball ornament candle) are outside the scope; April 7, 1999.

A–570–504 Petroleum Wax Candles; Meijer, Inc.; three Halloween figure tapers are outside the scope; October 14, 1999.

A–570–506 Porcelain-on-Steel Cookware; Tristar Products; grill set with aluminum grill plate is outside the scope; March 8, 2000.

A–570–832 Pure Magnesium; Rossborough Manufacturing Company, LP; AZ10A magnesium is off-specification pure magnesium within the scope; July 22, 1999.

A–570–840; Manganese Metal; Kerr-McGee Chemical, LLC; manganese-aluminum briquettes are outside the scope; January 7, 2000.

A–570–850 Collated Roofing Nails; Stanley Bostich Fastener Division of Stanley Works, Inc.; stainless steel collated roofing nails are outside the scope; September 2, 1999.

Taiwan

A–583–826 Collated Roofing Nails; Stanley Bostich Fastener Division of Stanley Works, Inc.; stainless steel collated roofing nails are outside the scope; September 2, 1999.

Turkey

A–489–805, C–489–806 Certain Pasta; self-initiated by the Department; pasta in packages weighing (or labeled as weighing) up to and including five pounds, four ounces is within the scope; May 24, 1999.

Anticircumvention Determinations Completed Between October 1, 1998 and March 31, 2000

Germany

A–428–811, C–428–812 Certain Hot-Rolled Lead and Bismuth Carbon Steel Products; imports of leaded steel billets which are subsequently converted into certain hot-rolled lead and bismuth carbon steel products subject to the order are not circumventing the order; July 26, 1999.

Italy

A–475–818 Certain Pasta; imports of bulk (i.e., greater than five pounds) pasta by Barilla, S.r.L., which are subsequently repackaged into packages of five pounds or less, are circumventing the order; October 13, 1998.

United Kingdom

A–412–810, C–412–811 Certain Hot-Rolled Lead and Bismuth Carbon Steel Products; imports of leaded steel billets which are subsequently converted into certain hot-rolled lead and bismuth carbon steel products subject to the order are not circumventing the order; July 26, 1999.

Scope Inquiries Terminated Between October 1, 1998 and March 31, 2000

Australia

A–603–803 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Canada

A–122–822 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/

lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

France

A–427–808, C–427–810 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Germany

A–428–815, C–428–817 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Japan

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Republic of Korea

A–480–816, C–580–818 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Anticircumvention Inquiries Terminated Between October 1, 1998 and March 31, 2000

Mexico

A–201–805 Certain Circular Welded Non-Alloy Steel Pipe; whether imports of pipe certified to API 5L line pipe specifications, or pipe dual-certified to both the API 5L and ASTM A–53 specifications, are circumventing the order. Preliminary affirmative determination released December 19, 1997. Department permanently enjoined from completing inquiry in *Hylsa, S.A. de C.V.* v. *United States*, Slip Op. 98–80 (CIT 1998); appeal withdrawn on January 19, 1999. Anticircumvention inquiry terminated August 12, 1999.

Scope Inquiries Pending as of March 31, 2000

Germany

A–428–821 Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled (LNPP); KBA North America Inc., Web Press Division; various LNPP parts or subcomponents imported for the production of an LNPP system sold to Dayton Newspapers, Inc. were found preliminarily to be outside the scope on December 22, 1997, January 27, 1998, June 17, 1998, and August 4, 1998. Final decisions pending.

A–428–821 Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled (LNPP); KBA North America Inc., Web Press Division; various LNPP parts or subcomponents imported for the production of an LNPP system sold to the Fayetteville Publishing Company were found preliminarily to be outside the scope on December 30, 1998, January 14, 1999, and February 1, 1999. Final decisions pending.

India

A–533–808 Certain Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless wire rod imported from India is within the scope. Requested December 22, 1998.

Italy

A–475–059 Pressure-Sensitive Plastic Tape; CCL Industries LLC, d.b.a. CST Special Tapes; whether ''surface protection tape'' is covered by the scope of the order. Requested January 28, 2000.

A–475–820, C–475–821 Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless steel wire rod imported from Italy is within the scope. Requested December 22, 1998.

Japan

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; NTN Bearing Corporation of America; whether the ''EM coupling'' and ring plates used in scroll compressors for automotive air conditioners are antifriction bearing parts covered by the order. Received March 16, 2000.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; NTN Corporation of America; whether certain ball rolling elements used in scroll compressors for automotive air conditioners are antifriction bearing parts covered by the order. Received March 16, 2000.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof and Cylindrical Roller Bearings and Parts Thereof; Subaru-Isuzu Automotive, Inc. (SIA); whether fan bracket assembly, identified as Isuzu part number 8971486750 (prior to October 1, 1999) and 8972317180 (as of October 1, 1999) is within the scope of either order; Received April 11, 2000.

A–588–807 Industrial Belts and Components and Parts Thereof, whether Cured or Uncured; International Business Machines; whether two models of belts imported by IBM for use in the IBM 3900 and IBM 4000 Advanced Function Printing Systems are within the scope of the order. Received January 28, 2000.

A–588–843 Certain Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless steel wire rod imported from Japan is within the scope. Requested December 22, 1998.

People's Republic of China

A–570–504 Petroleum Wax Candles; American Greetings Corporation; whether eight decorated tapers and two decorated pillars are holiday novelty candles, or candles shaped as identifiable objects and, thus, excluded from the order. Requested February 7, 2000.

A–570–504 Petroleum Wax Candles; Endar Corporation; whether three ''round Chinese lantern'' candles, one silver-studded votive, and one ''candy cane floater'' are candles shaped as identifiable objects or holiday novelty candles and, thus, excluded from the order. Requested March 27, 2000.

A–570–803 Heavy Forged Hand Tools; Tianjin Machinery Import/Export Corporation; whether Tianjin's Pulaski Tools are outside the scope of the order. Requested July 23, 1999.

A–570–803 Heavy Forged Hand Tools; SMC Pacific Tools, Inc. and Olympia Industrial Inc.; whether certain pry bars are within the scope. Requested October 27, 1999.

A–570–827 Certain Cased Pencils; Dollar General Corporation; whether two stationery sets with pencils are within the scope. Requested December 22, 1999.

A–570–851 Certain Preserved Mushrooms; Mei Wei Food Industry Co., Ltd., Tak Fat Trading Co., Leung Mi International, Tak Yeun Corp., and Genex International Corp; marinated or acidified mushrooms with an acetic acid content under 0.5 percent preliminarily

found to be within the scope; final decision pending.

Russian Federation

A–821–802 Antidumping Suspension Agreement on Uranium; USEC Inc. and its subsidiary, United States Enrichment Corporation; whether enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope. Requested August 6, 1999.

Spain

A–469–807, C–469–004 Certain Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless steel wire rod imported from Spain is within the scope. Requested December 22, 1998.

Taiwan

A–583–828 Certain Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless steel wire rod imported from Taiwan is within the scope. Requested December 22, 1998.

Anticircumvention Inquiries Pending as of March 31, 2000

Canada

A–122–823 Cut-to-Length Carbon Steel Plate; Kentucky Electric Steel Company; whether imports of boron-added grader blade and draft key steel, falling within the physical dimensions outlined in the scope of the order, are circumventing the order. Initiated May 28, 1998.[1]

Japan

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; USS-Posco Industries; whether imports of boron-added hot-dipped and electrolytic corrosion-resistant carbon steel sheet, falling within the physical dimensions outlined in the scope of the order, are circumventing the order. Initiated October 30, 1998.[2]

Interested parties are invited to comment on the completeness of this list of pending scope inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Enforcement Group III, Import Administration, International Trade Administration, 14th Street and Constitution Avenue NW, Room 1870, Washington, DC 20230.

This notice is published in accordance with section 351.225(o) of the Department's regulations.

Dated: June 28, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 00–17245 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] The Department was preliminarily enjoined from proceeding with this inquiry in *Co-Steel Lasco and Gerdau MRM Steel* v. *United States,* Ct. No. 98–08–02684 (Ct. Int'l Trade); however, a final and conclusive decision on the merits of this case has not been issued.

[2] The Department was enjoined from proceeding with this inquiry in *Nippon Steel* v. *United States,* Ct. No. 98–10–03102 (Ct. Int'l Trade); however, the case is presently pending before the Court of Appeals for the Federal Circuit, No. 99–1379, 1386 (Fed. Cir.).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 063000B]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Working Group will hold a public meeting.

DATES: The meeting will be held on Monday, July 24, 2000, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Sheraton BWI Airport, 7032 Elm Road, Baltimore, MD; telephone: 410–691–9827.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to consider future management measures and possible actions for the summer flounder fishery.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 30, 2000.

Richard W. Surdi,

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

[FR Doc. 00–17268 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic And Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meetings and intent to prepare a Draft Environmental Impact Statement

SUMMARY: In accordance with the National Environmental Policy Act and with section 315 of the Coastal Zone Management Act of 1972, as amended, San Francisco State University and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct public scoping meetings on the proposed San Francisco Bay National Estuarine Research Reserve to solicit comments on significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS)/Draft Management Plan (DMP). The DEIS/DMP will address research, monitoring, education and resource protection needs for the reserve.

DATE AND TIME: Tuesday, July 25th, 7 to 9 p.m.

ADDRESSES: Marin Civic Center, Marin County Board of Supervisors Chambers, 3501 Civic Center Drive, San Rafael, CA 94903.

DATE AND TIME: Wednesday, July 26th, 7 to 9 p.m.

ADDRESSES: Suisun City, City Hall, Suisun City Council Chambers, 701 Civic Center Blvd, Suisun City, CA 94585.

FOR FURTHER INFORMATION CONTACT: Dr. Todd Hopkins, San Francisco State

University, at (415) 338–3703, or Matt Menashes, Estuarine Reserves Division, Office of Ocean and Coastal Resources Management, NOAA, at (301) 713–3132, extension 165.

SUPPLEMENTARY INFORMATION: In 1993, NOAA approved the nomination of a proposed multi-component National Estuarine Research Reserve (NERR) for San Francisco Bay. Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance scientific understanding of the coastal environment and aid in resource management decision making.

In early 1999 the original proposal approved by NOAA was modified. The modified proposal meets the principles established for inclusion of areas in the National Estuarine Research Reserve System. These include:

1. Biogeographic and typologic contribution,
2. Ecological characteristics,
3. Value of the sites for research, monitoring, education and interpretation,
4. Site management feasibility including (a) land ownership, (b) the ability to sustain reserve resources for long term research and education use, and (c) partnership potential.

The San Francisco Bay NERR is proposed to be administered by San Francisco State University (SFSU) in cooperation with partner agencies including Solano County Farmlands and Open Space Foundation, East Bay Regional Park District, and the California Department of Parks and Recreation.

SFSU has developed an outline of a preliminary draft management plan. That outline identifies specific needs and priorities related to research, monitoring, education, and resource protection at the proposed reserve. It also identifies needs for an administrative plan, volunteer program and facilities development needs, public access, and visitor use policies.

At the public meetings, SFSU and NOAA will provide a synopsis of the process for developing a DEIS/DMP and will solicit comments on significant environmental issues that will be incorporated into a DEIS.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of the proposed DEIS/DMP are invited to attend either of the above meetings. Parties who wish to respond in writing should do so by August 15, 2000, to Dr. Todd Hopkins, Romberg Tiburon Center, San Francisco State University, P.O. Box 855, Tiburon, CA 94920, or Matthew Menashes, NOAA Estuarine Reserves Division, 1305 East-West Highway N/ORM5, Silver Spring, MD 20910.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: June 30, 2000.

John Oliver,

Chief Financial Officer/Chief Administrative Officer, National Ocean Service.

[FR Doc. 00–17157 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–08–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Increase of Base Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

June 30, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and increasing base limits.

EFFECTIVE DATE: July 7, 2000.

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 these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

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 limits for certain categories are being adjusted for carryover, carryforward used, swing and the recrediting of unused carryforward.

In a Memorandum of Understanding, dated May 25, 2000, the Governments of the United States and Pakistan agreed to increase the 2000 base limits for Categories 666–P and 666–S. These limits have been decreased by the amount of carryforward used in 1999. Also, swing into Categories 666–P and 666–S from Category 315 is increased, due to the higher base limits they now have.

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 64 FR 71982, published on December 22, 1999). Also see 64 FR 68335, published on December 7, 1999.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

In a Memorandum of Understanding, dated May 25, 2000, the Governments of the United States and Pakistan agreed to increase the 2000 limits for Categories 666–P and 666–S.

Effective on July 7, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits	
226/313	123,196,058 square meters.
237	536,663 dozen.
315	86,112,744 square meters.
317/617	43,124,336 square meters.
335/635	520,387 dozen.
336/636	684,608 dozen.
352/652	1,141,014 dozen.
359–C/659–C [2]	2,053,826 kilograms.
369–F/369–P [3]	3,122,624 kilograms.
613/614	30,924,911 square meters.

Category	Adjusted twelve-month limit [1]
625/626/627/628/629	101,182,122 square meters of which not more than 50,591,063 square meters shall be in Category 625; not more than 50,591,063 square meters shall be in Category 626; not more than 50,591,063 square meters shall be in Category 627; not more than 10,467,117 square meters shall be in Category 628; and not more than 50,591,063 square meters shall be in Category 629.
666–P [4]	808,874 kilograms.
666–S [5]	5,076,389 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[4] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[5] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17160 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on July 19, 2000, in the first floor hearing room (Room 1000) of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1151 21st Street, NW, Washington, DC 20581. The meeting will begin at 1:30 p.m. and last until 5 p.m. The agenda will consist of the following:

Agenda

1. Welcoming Remarks
2. CFTC Regulatory Reinvention Proposal
3. Presentation by U.S. Exchange Representatives
4. Legislative Update
5. Recent Innovations in Agricultural Risk Management and Marketing
6. Other business

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner David D. Spears, is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Agricultural Advisory Committee, c/o Commissioner David D. Spears, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Spears in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on June 30, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17132 Filed 7–6–00; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Flammability Standards for Clothing Textiles and Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of April 25, 2000 (65 FR 24187), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval of a collection of information in regulations implementing the flammability standards for clothing textiles and vinyl plastic film. The regulations prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of garments, fabrics, and related materials subject to the Standard for the Flammability of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611). No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for an extension of approval of those collections of information without change for three years from the date of approval by OMB.

Additional Information About the Request for Extension of Approval of the Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Clothing Textiles, 16 CFR part 1610; Standard for the Flammability of Vinyl Plastic Film, 16 CFR part 1611.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of garments, fabrics, and related materials subject to the flammability standards for clothing textiles and vinyl plastic film.

Estimated number of respondents: 1000.

Estimated average number of hours per respondent: 101.6 per year.

Estimated number of hours for all respondents: 101,600 per year.

Estimated cost of collection for all respondents: $1,400,000.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by August 7, 2000 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Written comments may also be sent to the Office

of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0416, ext. 2226.

Dated: June 30, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–17131 Filed 7–6–00; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for AmeriCorps*VISTA/Higher Education and Non-Profit Service-Learning Program Grants

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter ''the Corporation'') announces the availability of funds for fiscal year 2000 for new AmeriCorps*VISTA (Volunteers in Service to America) Program grants and placements focusing on meeting the needs of low income communities, both urban and rural, through institutions of higher learning and non-profit organizations engaged in service-learning-focused activities, including current Learn and Serve America grantees.

As Harris Wofford, the CEO for the Corporation has stated, ''by making the entire community the classroom, service-learning teaches students how to be better students and better citizens.'' The Corporation for National Service defines service-learning as an educational method:

- Under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community;
- Which is coordinated within an elementary school, secondary school, institution of higher education, or community service program, and with the community;
- Which helps foster civic responsibility;
- Which is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participant is enrolled; and
- Which provides structured time for the students or participants to reflect on the service experience.

AmeriCorps*VISTA/Higher Education and Non-Profit Service-Learning Program Grants will focus on service-learning activities addressing the needs of low-income communities in school districts. AmeriCorps*VISTA Program grant recipients must create sustainable anti-poverty service-learning programs after the AmeriCorps*VISTA resources are withdrawn. Applicants must clearly describe sustainable outcomes in terms of the impact on residents of low-income communities, both urban and rural, through the efforts of these projects.

Up to 10 grants will be funded. Each grant will support a minimum of five AmeriCorps*VISTA members. Grants with a larger number of AmeriCorps*VISTA members are encouraged. It is expected that grants will be awarded in September 2000. Each proposed grant project must be within the jurisdiction of a single Corporation for National Service State Office (state offices cover their own states only, with the following exceptions that are combined: Maine & New Hampshire, Vermont & Massachusetts; North & South Dakotas; Virginia & Washington, DC; Puerto Rico & Virgin islands; Maryland & Delaware).

DATES: Applications must be received by 5:00 p.m. E.D.T., August 4, 2000.

ADDRESSES: Background information, including project applications, are available from the Corporation for National and Community Service, AmeriCorps*VISTA, 1201 New York Ave., N.W., Washington, DC 20525, (202) 606–5000, ext. 134; TDD (202) 565–2799, or TTY via the Federal Information Relay Service at (800) 877–8339. One signed original and two copies of the application should be submitted to the Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, D.C. 20525 Attn: David Gurr. The Corporation will not accept applications that are submitted via facsimile or e-mail transmission. Applications submitted via overnight mail that arrive after the closing date will be accepted if they are postmarked at least two days prior to the closing date. Otherwise, late applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: For further information, contact David Gurr, at 202–606–5000, ext. 212.

SUPPLEMENTARY INFORMATION:

A. Background

The Corporation is a Federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, we strive to foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service. We support a range of national service programs, including AmeriCorps, Learn and Serve America, and the National Senior Service Corps.

AmeriCorps*VISTA, a component of AmeriCorps, is authorized under the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of AmeriCorps*VISTA is ''to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups * * * (to) assist in the solution of poverty and poverty-related problems, and * * * to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purpose (of the program).'' (42 U.S.C. 4951)

AmeriCorps*VISTA carries out its legislative mandate by assigning individuals 18 years and older, on a full-time, year-long basis, to public and private non-profit organizations. Each AmeriCorps*VISTA project must focus on the mobilization of community resources, the transference of skills to community residents, and the expansion of the capacity of community-based organizations to solve local problems. Programming should encourage permanent, long-term solutions to problems confronting low-income communities rather than short-term approaches for handling emergency needs.

AmeriCorps*VISTA projects must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as to make the activities undertaken by AmeriCorps*VISTA members self-sustaining.

B. Purpose of This Announcement

The purpose of this announcement is to solicit applicants from the service-

learning community who will focus efforts solely on addressing the needs of low-income communities. These efforts should be accomplished through community-based organizations and/or institutions of higher education whose efforts draw upon the unique strengths of service-learning as well as learned best practices. The goal of these efforts is the creation of sustained service-learning opportunities and permanent long-term programming that continues to meet the needs of low-income communities after AmeriCorps*VISTA resources are withdrawn.

C. Eligible Applicants

Institutions of higher learning and non-profit organizations engaged in service learning activities, including current Learn and Serve America grantees.

D. Scope of Grant and Project

Each applicant should include in the Application for Federal Assistance (see E.2, below) funds for: a monthly subsistence allowance for AmeriCorps*VISTA members that is commensurate with the cost-of-living of the assignment area, as determined by AmeriCorps*VISTA, that covers the cost of subsistence, utilities, and incidental expenses; an end-of-service cash stipend payment, accrued at the rate of $100 per month, for those members not selecting the AmeriCorps education award of $4,725; and relocation expenses not to exceed $550, for those AmeriCorps*VISTA members who must relocate in order to serve. Each grant applicant should also include in the Application for Federal Assistance, a request for funds for member in-service training, member supervision, and member/supervisor job-related transportation.

Although there are no matching requirements for the receipt of AmeriCorps*VISTA members, applicants should demonstrate their commitment to matching the Federal contribution toward the operation of the AmeriCorps*VISTA project grant by offsetting all, or part of, the costs of member supervision, transportation, and training, as well as the basic costs of the project itself (*e.g.*, space, telephone, etc.). This support can be achieved through cash or in-kind contributions.

Further, applicants are encouraged to share in the costs of the project, including paying for a specified number of AmeriCorps*VISTA positions, to include all costs except for health insurance, the education award, health care and childcare, which will be paid by the Corporation.

Grants will be awarded on a twelve-month basis with a renewal option subject to need, satisfactory performance, and the availability of Corporation resources. Publication of this announcement does not obligate the Corporation to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the AmeriCorps*VISTA Program, or to approve any specific number of non-grant projects for the placement of AmeriCorps*VISTA members.

E. Submission Requirements

To be considered for funding, applicants must submit one signed original and two copies, of the AmeriCorps*VISTA application form. Each must contain an original signature in all sections where it is required. In addition, applicants must include the following:

1. A one-page narrative summary description, single-spaced, single-sided, of the proposed AmeriCorps*VISTA project including the name, address, telephone number, and contact person for the applicant organization. The summary should include the major objectives and expected long-term outcomes of the project. The summary will be used as a project abstract to provide reviewers with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary that accurately and concisely reflects the proposal.

2. Application for Federal Assistance (SF 424) (OMB Approval No. 0348–0043), including the Part II Budget. This is a standard form used by applicants as a required face sheet for applications requesting Federal assistance. It includes attachments requiring signatures assuring that applicants comply with all other relevant Federal laws, rules and regulations, and certifications that: (a) The applicant has not been debarred from receiving Federal assistance, (b) that it has a drug-free work plan and (c) that it will comply with Federal requirements governing lobbying activities.

3. Part A (CNS Form 1421A) (OMB Control Number 3045–0039) containing a description of the organization's mission, population to be served, experience in the areas of service and specific problems of poverty to be addressed. In addition, the applicant must state the problems it will address, the long-term goals of the project and anticipated outcomes over the entire length of the project and the anticipated impact on the low-income community. Finally, the applicant must describe the activities that the AmeriCorps*VISTA members will perform in accomplishing those goals, the applicant's experience in coordinating the efforts of community volunteers and/or service participants, and the resources that exist to support the project, including the organizations that will serve as collaborators.

4. Part B (CNS Form 1421B) (OMB Control Number 3045–0038) which includes a measurable and quantifiable description of the specific problem(s) the AmeriCorps*VISTA project will address, current activities to address the problem and how AmeriCorps*VISTA members will complement this effort. A work plan must be completed for the first year of the project that contains objectives that are measurable, quantifiable and time-phased by each quarter of the year. Also, there must be a brief description of the applicant organization, its mission and activities, and the low-income population to be served, along with a description of how the project is incorporated into the overall mission of the applicant organization. The applicant must list the tasks and activities of the AmeriCorps*VISTA member assignments, required skills and qualifications of members, and factors to be considered in assigning disabled members. A description is needed of: (a) How project beneficiaries will be involved in the planning of the project, including in its development and implementation and (b) what resources will be provided by the community for a successful project and how the community will be involved in assuring project sustainability. Also, there must be a description of the process for recruiting qualified AmeriCorps*VISTA members, including whether the applicant needs nationally recruited members (members recruited by the Corporation's Office of Recruitment, Selection and Placement), and how members will be supervised. Finally, the applicant needs to state if support will be needed for on-the-job transportation of AmeriCorps*VISTA members, the content of the On-the-Job Orientation of these members, including on-going training and technical assistance available to them, and plans for publicizing the project, recognizing member accomplishments, and community support in sustaining their efforts.

5. Documentation in the form of letters of support from collaborating organizations and/or individuals stating what will be provided by them in the overall project effort.

6. Copy of Articles of Incorporation (not applicable to public entities).

7. List of Board of Directors or governing body (not applicable to public entities).

8. Organizational chart illustrating the location of the AmeriCorps*VISTA project within the overall applicant organization.

9. List of Advisory Council Members if already selected.

10. Tax exempt status: either IRS determination or copy of application to IRS for exemption (not applicable to public entities).

11. Copy of Supervisor's Resume and Job Description.

12. Copy of most recent financial audit if available.

F. Criteria for Project Selection

I. All of the following elements will be used in judging the applications:

a. Getting Things Done

The proposed project must:

1. Address the needs of low-income communities and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951 *et seq.*) applicable to AmeriCorps*VISTA and all applicable published regulations, guidelines, and Corporation policies.

2. Be internally consistent, *i.e.,* the problem statement that demonstrates need, the project work plan, the AmeriCorps*VISTA member assignment description, and all other components must be related logically to each other.

3. Contain clear and measurable objectives/outcomes in the project application for a 12-month period that address the overall objectives of the initiative. Proposed projects must show how the activities of the AmeriCorps*VISTA members contribute to specific outcomes related to increased opportunity for low-income people. It is expected that outcome objectives in the Part B work plan will reflect the evolution of the project over the 12-month period.

4. Indicate how the proposed project complements and/or enhances activities already underway in, or planned for, the community(ies) that will be served by the project. To the extent possible, projects should seek out opportunities to collaborate with other Corporation programs, including Learn and Serve America grantees, as well as with other community partners, including the business sector.

5. Describe how the number of AmeriCorps*VISTA members requested is appropriate for the project goals/objectives, and how the skills requested are appropriate for the assignment(s).

b. Strengthening Communities

The proposed project must:

1. Describe how the project will be sustained after Americorps*VISTA resources are withdrawn from the local low-income community.

2. Demonstrate collaboration with organizations that provide supportive services to enhance project outcomes.

3. Be designed to generate public and/or private sector resources, and to promote local, part-time volunteer service at the low-income community level, not only to assist in the project itself, but also to sustain its efforts after the Corporation ceases its support.

4. Describe in measurable terms the anticipated self-sufficiency outcomes and tangible anti-poverty goals and objectives after AmeriCorps*VISTA resources are withdrawn, including outcomes related to the sustainability and institutionalization of the project activities in addressing and resolving challenges faced by low-income residents of the target community(ies).

c. AmeriCorps*VISTA Member Development

The proposed project must:

1. Clearly state how AmeriCorps*VISTA members will be trained, supervised, and supported to ensure the achievement of project goals and objectives as stated in the Part B work plan.

2. Describe how AmeriCorps*VISTA assignments are designed to utilize the full-time AmeriCorps*VISTA members' time to the maximum extent.

II. Organizational Capacity

The applicant organization must:

1. Ensure that resources needed to achieve project goals and objectives are available.

2. Have the management and technical capability to implement the project successfully.

3. Have an established record or experience in dealing with the issues addressed by the proposed project.

4. Have systems for the evaluation and monitoring of project activities. Applicants must describe the methods that will be used to record progress toward the stated objectives, and procedures that will provide the reporting of project achievement needed to make adjustments and improve program quality.

III. Budget/Cost-Effectiveness

The applicant organization must:

1. Include a budget that adequately supports the program design.

2. Include a budget that adheres to budget guidance provided with the application.

3. Describe how the applicant organization is committing resources necessary for program implementation.

G. Application Review

Proposal Evaluation

To ensure fairness to all applicants, the Corporation reserves the right to take action, up to and including disqualification, in the event that an application fails to comply with any requirements specified in this Notice.

The following weights will be used in judging the elements described above.

1. Program Design (60%) in the following order of importance:

a. Responsiveness to Strengthening Communities Criteria

b. Responsiveness to Getting Things Done Criteria

2. Organizational Capacity (30%).

3. Budget cost-effectiveness (10%).

H. Geographic Diversity

After evaluating the overall quality of the proposal and its responsiveness to the criteria noted above, the Corporation will take into consideration whether funded projects are in areas of high concentration of low-income residents, including for example those in empowerment zones, and enterprise communities.

I. Technical Assistance Conference Call

An informal, technical assistance conference call will be scheduled on Thursday, July 20, 2000, at 2 p.m. E.D.T. All applicants must pre-register by faxing the names, organization and phone number of up to two members planning to participate no later than Tuesday, July 18, 2000. This information should be faxed to Kara Lounsbury at 202–565–2789. Questions may be submitted in advance of the meeting via fax to the above number. If you are unable to participate in the technical assistance conference call but would like the conference materials and a conference transcript, submit your request via fax to the fax number above.

J. Program Authority

Corporation authority to make these grants and approve projects is authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

Dated: June 29, 2000.

Matt Dunne,

*Director, AmeriCorps*VISTA Program.*

[FR Doc. 00–17152 Filed 7–6–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0114]

Submission for OMB Review; Comment Request entitled Right of First Refusal of Employment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0114).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Right of First Refusal of Employment. A request for public comments was published at 65 FR 25315, on May 1, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 5, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Right of First Refusal of Employment is a regulation that establishes policy regarding adversely affected or separated Government employees resulting from the conversion from in-house performance to performance by contract. The policy enables these employees to have an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

B. Annual Reporting Burden

Number of Respondents: 130.

Responses Per Respondent: 1.

Total Responses: 130.

Average Burden Hours Per Response: 3.

Total Burden Hours: 390.

Obtaining Copies of Proposals:

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0114, Right of First Refusal of Employment, in all correspondence.

Dated: July 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–17238 Filed 7–6–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0113]

Submission for OMB Review; Comment Request Entitled Acquisition of Helium

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0113).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Acquisition of Helium. A request for public comments was published at 65 FR 25316, on May 1, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 5, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Federal Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Helium Act (Pub. L. 86–777) (50 U.S.C. 167a, *et seq.*) and the Department of the Interior's implementing regulations (30 CFR parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Land Management, Department of the Interior.

The FAR requires offerors responding to contract solicitations to provide information as to their forecast of helium required for performance of the contract. Such information will facilitate enforcement of the requirements of the Helium Act and the contractual provisions requiring the use of Government helium by agency contractors, in that it will permit corrective action to be taken if the Bureau of Land Management, after comparing helium sales data against helium requirement forecasts, discovers apparent serious discrepancies.

The information is used in administration of certain Federal

contracts to ensure contractor compliance with contract clauses. Without the information, the required use of Government helium cannot be monitored and enforced effectively.

B. Annual Reporting Burden

Number of Respondents: 20.
Responses Per Respondent: 1.
Total Responses: 20.
Average Burden Hours Per Response: 1.
Total Burden Hours: 20.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0113, Acquisition of Helium, in all correspondence.

Dated: July 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–17239 Filed 7–6–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0096]

Submission for OMB Review; Comment Request; Entitled Patents

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0096).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Patents. A request for public comments was published at 65 FR 25316, on May 1, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 5, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract above a dollar value of $25,000 (sections 27.202–1 and 52.227–2). The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (sections 27.204–1, 52.227–6, and 52.227–9). The information collected is to protect the rights of the patent holder and the interest of the Government.

B. Annual Reporting Burden

Number of Respondents: 30.
Responses Per Respondent: 1.
Total Responses: 30.
Average Burden Hours Per Response: .5.
Total Burden Hours: 15.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0096, Patents, in all correspondence.

Dated: July 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–17240 Filed 7–6–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection, Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed extension of a currently approved 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 5, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOP, 550 D Street West, Suite 1, Randolph AFB, TX 78150–4527.

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 Headquarters AFRS/RSOP, Enlisted Accessions Branch, at (210) 652–6188.

Title, Associated Form, and OMB Number: Non-Prior Service and Prior Service Accessions, AETC Forms 1319, 1325, and 1419 and OMB Number 0701–0079.

Needs and Uses: The information collection requirement is necessary for recruiters to determine applicant qualifications when conducting an interview. Information from the interview will determine if additional

documents on law violations, citizenship verification, and education are needed. Applicants who have reached a certain age, marital status or classification are required to submit financial information.

Affected Public: Individuals or households.

Annual Burden Hours: 69,105.

Number of Respondents: 110,231.

Responses Per Respondent: 1.

Average Burden Per Response: 1.05 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are civilian non-prior and prior service personnel applying for enlistment into the Air Force as enlisted members. The completed forms are used by the recruiter to establish eligibility status of applicants and determine what additional forms are needed to obtain the required information. If the forms are not included in the case file, individuals reviewing the file cannot be readily assured of the qualifications of the applicant.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–17213 Filed 7–6–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 30, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: The Impact of ICT on Learning: Quasi-Experimental Study.

Frequency: Three times a year.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,572.

Burden Hours: 7,572.

Abstract: Under auspices of the Organization for Economic Cooperation and Development, the Department of Education will participate in an international study to examine the impact of information and communication technology (ICT) on student learning. The study will use the following instruments: (a) ICT Skill Test, (b) Learning to Learn Test, (c) ICT Attitudes Survey—Students, (d) ICT Use Survey—Students, (e) ICT Attitude Survey—Teachers, (f) ICT Use Survey—Teachers, (g) Student Background Survey, and (h) Teacher Background Survey. Two thousand four hundred eleventh grade students will participate in this study from 24 schools. In addition, about 100 teachers and 24 school administrators will respond to the ICT Attitude and Use surveys.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–17141 Filed 7–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7. 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing

proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 30, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Targeting Teacher Deferment/ Teacher Shortage Area Collection.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 4,560.

Abstract: Collection of State proposals for Targeted Teacher Deferment/Teacher Shortage Areas, of the Higher Education Act of 1986.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–17142 Filed 7–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–2869–000 and EC00–103–000]

Consumers Energy Company; Notice of Filing

June 30, 2000.

Take notice that on June 16, 2000, Consumers Energy Company (CECo) filed an application under Sections 203 and 205 of the Federal Power Act for approval of an alternative governance structure for the Alliance Regional Transmission Organization (Alliance RTO) once it takes the form of an independent transmission company (Transco).

CECo states that its application is related to and anticipated by the June 3, 1999 applications of the Alliance companies [1] under Sections 203 and 205 of the Federal Power Act to create the Alliance RTO.

Any person desiring to be heard or to protest such filing 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). All such motions and protests should be filed on or before July 17, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17170 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

[1] The Alliance Companies are: American Electric Power Service Corporation (AEP) on behalf of the public utility operating company subsidiaries of the AEP system (Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company), CECo, The Detroit Edison Company (Detroit Edison), FirstEnergy Corporation (FirstEnergy) on behalf of the transmission-owning FirstEnergy Operating companies (The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and the Toledo Edison Company), and Virginia Electric and Power Company (Virginia Power).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–396–000]

Delmarva Power & Light Company; Notice of Application

June 30, 2000.

Take notice that on June 23, 2000, Delmarva Power & Light Company (Delmarva), 800 King Street, Wilmington, Delaware 19899, filed in Docket No. CP00–396–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by transfer to Texas Eastern Pipeline Company (TETCO) its undivided ownership interest in the Delmarva Lateral, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to I. David Rosenstein, Senior Counsel, Delmarva Power & Light Company, 800 King Street, Wilmington, Delaware 19899.

Specifically, Delmarva proposes to abandon by transfer to TETCO, the Delmarva Lateral,[1] a 3.97 mile 16-inch pipeline extending from an interconnection with TETCO's Line 1–A–1 in Delaware County, Pennsylvania to Delmarva's distribution system in New Castle County, Delaware. The abandonment will enable the completion of a corporate reorganization. Delmarva states that TETCO will acquire ownership of the Delmarva Lateral under its Part 157 blanket construction certificate and will continue to operate and maintain it and provide open access transportation service pursuant to its Part 284 blanket transportation certificate and its FERC Gas Tariff.

Delmarva states that currently it uses all the natural gas that is transports through the Delmarva lateral as either system supply, as supply for retail customers being served by third parties under competitive conditions, or as fuel for its Hay Road and Edge More generating facilities. Delmarva submits that the proposed abandonment of the Delmarva Lateral by transfer to TETCO will not in any way degrade or adversely impact the existing services provided to entities that currently

[1] Certificate was issued in Docket No. CP92–153–000 (59 FERC ¶ 61,396, amended in 60 FERC ¶62,132 (1992)).

receive service on the Delmarva Lateral since TETCO will provide transportation service on the lateral. After the corporate reorganization, Delmarva will continue to be responsible for the acquisition of system supply, while Conectiv Energy Supply, Inc. will be responsible for gas purchased for resale to competitive retail customers and for fuel for the generating facilities.

Any person desiring to be heard or any person desiring to make any protests with reference to said application should on or before July 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest 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 Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a part in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is time filed, or if the Commission on its own motion believes that a formal hearing is require, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Delmarva to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–17167 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3038–000]

New York Independent System Operator, Inc.; Notice of Filing

July 3, 2000.

Take notice that on June 30, 2000, the New York Independent System Operator, Inc., acting at the direction of its independent Board of Directors (NYISO Board) and pursuant to its ''exigent circumstances'' authority, unilaterally filed proposed tariff amendments that would implement temporary bid caps in certain NYISO-administered markets.

The NYISO Board requested that the proposed temporary bid caps become effective on July 6, 2000, and expire no later than October 28, 2000.

A copy of this filing was served upon all parties in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4324–000, not consolidated, all parties in Docket No. EL00–70–000, and on all other parties who have executed Service Agreements under the NYISO's Open Access Transmission Tariff or Market Administration and Control Area Services Tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 10, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17321 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2676–000]

Panda Perkiomen Power, L.P.; Notice of Filing

June 30, 2000.

Take notice that on June 21, 2000, Panda Perkiomen Power, L.P. (Panda Perkiomen), tendered for filing a revised FERC Electric Rate Schedule No. 1 as part of its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, which was filed on June 1, 2000, with an effective date of July 31, 2000.

Panda Perkiomen intends to engage in electric power and energy transactions as a marketer. In transactions where Panda Perkiomen sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Panda Perkiomen nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Any person desiring to be heard or to protest such filing 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). All such motions and protests should be filed on or before July 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17169 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2971–000]

UtiliCorp United Inc.; Notice of Filing

June 30, 2000.

Take notice that on June 20, 2000, UtiliCorp United Inc., tendered for filing a notice that the open access transmission tariffs of Missouri Public Service and WestPlains Energy-Kansas are modified, effective May 1, 2000, to incorporate the Mid-Continent Area Power Pool's Line Loading Relief procedures.

Any person desiring to be heard or to protest such filing 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). All such motions and protests should be filed on or before July 11, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17168 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. 5. EC–46–000, ER00–1027–000, ER00–1028–000, and ER00–1029–000]

Vermont Yankee Nuclear Power Corp., Vermont Electric Power Company, Inc., and AmerGen Vermont, L.L.C. Notice of Initiation of Proceeding and Refund Effective Date

June 30, 2000.

Take notice that on June 29, 2000, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. ER00–1029–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. ER00–1029–000 will be 60 days after publication of this notice in the **Federal Register.**

David P. Boergers,

Secretary.

[FR Doc. 00–17172 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–394–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

June 30, 2000.

Take notice that on June 21, 2000, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP00–394–000 an application pursuant to Sections 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities located in Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Williams proposes to abandon approximately 64.3 miles of the Pampa 20-inch pipeline (Line G) and appurtenant facilities located in Butler, Chase and Lyon Counties, Kansas. Williams proposes to abandon the facilities by sale for subsequent reclaim for salvage and abandonment in place. It is explained that the proposed abandonment is part of Williams' ongoing effort to eliminate old, high maintenance pipelines. Williams estimates the sale price at slightly over $1 million and the cost of abandonment at approximately $86,445. It is stated that Williams has a 65-mile 6-inch pipeline which has been idle and which has sufficient capacity to serve the customers that were served by the 20-inch pipeline. It is asserted that Williams has contacted the affected landowners, and that there would be no abandonment of service as a result of the proposed abandonment of facilities.

Any questions regarding the application should be directed to David N. Roberts, Manager, Tariffs & Regulatory Analysis, at (270) 688–6712, P.O. Box 20008, Owensboro, Kentucky 42304.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest 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 Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–17166 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1523–052, et al.]

Central Hudson Gas & Electric Corporation, et al.; Electric Rate and Corporate Regulation Filings

June 29, 2000.

Take notice that the following filings have been made with the Commission:

1. Central Hudson Gas & Electric Corporation

[Docket No. ER97–1523–052]

Take notice that on June 22, 2000, Central Hudson Gas & Electric Corporation, tendered for filing a compliance filing in the above-referenced docket.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–1022–001]

Take notice that on June 22, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light (WPL), tendered for filing a Amendment of Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period January 1, 2000 through December 31, 2000. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket Nos. ER98–992–003; ER98–996–002; ER98–1002–002; ER98–1310–002; ER98–1910–002; ER98–1912–002; ER98–1930–002; ER98–1931–002; ER98–1933–002; ER98–1935–002; and ER98–2115–002]

Take notice that on June 23, 2000, the California Independent System Operator Corporation, tendered for filing numerous Participating Generator Agreements for acceptance by the Commission. The purpose of the filing is to comply with the Commission's Letter Order of February 24, 2000.

The ISO states that this filing has been served on the persons listed on the official service list in Docket Nos. ER98–992–000, *et al.* and the California Public Utilities Commission.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–1023–001]

Take notice that on June 26, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light (WPL), tendered for filing a Amendment of Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period January 1, 2000 through December 31, 2000. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1262–004]

Take notice that on June 26, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Amendment No. 2 to its revisions to its Open Access Transmission Tariff (OATT) in compliance with the Commission's Order of April 13, 2000 at Docket No. ER00–1262–000, 91 FERC ¶ 61,044.

Amendment No. 2 corrects the effective date of Attachment K and includes changes accepted for filing by the Commission after the initial compliance filing on May 12, 2000.

Copies of the filing have been provided to jurisdictional customers, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2384–001]

Take notice that on June 26, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) and IES Utilities tendered for filing a Amendment to 240 MW Internal Capacity Contract between IPC and IES. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. AES Eastern Energy, L.P.

[Docket No. ER00–2463–001]

Take notice that on June 22, 2000, AES Eastern Energy, L.P. (AES Eastern), tendered for filing an amendment to its filing of two long-term service agreements between AES Eastern and Aquila Risk Management Corporation. The amendment clarifies that there are no charges for transmission or ancillary services included in the contract rates.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. DOW Pipeline Company

[Docket No. ER00–2529–001]

Take notice that on June 22, 2000, Dow Pipeline Company (DPL), tendered for filing a revised FERC Electric Rate Schedule No. 1 as part of its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, which was filed on May 17, 2000, with an effective date of May 18, 2000, the day following the date if its filing.

DPL intends to engage in electric power and energy transactions as a marketer. In transactions where DPL sells electric energy, it proposed to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. Neither DPL nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER00–2827–001]

Take notice that on June 26, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, re-submitted for filing with the Commission a Firm Transmission Service Agreement with Alliant Energy Corporate Services, Inc. (Alliant), dated May 31, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff. MidAmerican states that the purpose of the re-submission is to correct the Service Agreement Designation Cover Sheet and the form of notice.

MidAmerican requests an effective date of June 1, 2000, for the Agreement with Alliant, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Alliant, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Madison Gas and Electric Company

[Docket No. ER00–2932–000]

Take notice that on June 23, 2000, Madison Gas and Electric Company

(MGE), tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with Alliant Energy.

MGE requests this agreement be effective the date the agreement was filed with the FERC.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Otter Tail Power Company

[Docket No. ER00–2933–000]

Take notice that on June 23, 2000, Otter Tail Power Company (OTP), tendered for filing a Service Agreement between OTP and El Paso Merchant Energy, L.P. (El Paso). The Service Agreement allows El Paso to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER00–2934–000]

Take notice that on June 26, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an Amendment to the Interconnected Control Area Operating Agreement (ICAOA) between the ISO and the Los Angeles Department of Water and Power (LADWP). The ISO states that the Amendment modifies the ICAOA to allow the LADWP to supply Scheduling Coordinators with Regulation Service, pursuant to ISO Tariff Amendment No. 25.

The ISO requests that the Amendment be made effective as of June 22, 2000.

The ISO states that this filing has been served on the Los Angeles Department of Water and Power and the California Public Utilities Commission.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Gas and Electric Company

[Docket No. ER00–2935–000]

Take notice that on June 23, 2000, Madison Gas and Electric Company (MGE), tendered for filing with the Federal Energy Regulatory Commission, in accordance with the Commission's May 8, 2000 ''Order Accepting Filing'' in Docket No. ER00–1666–000, 91 FERC par. 61,122 (2000), notice that MGE's Open Access Transmission Tariff shall be considered modified to conform to the North American Electric Reliability Council's Transmission Loading Relief Procedures accepted by the Commission in its May 8 Order, except that MGE will not be providing Next Hour Market Service.

Copies of the filing have been served on MGE's transmission service customers, on the Public Service Commission of Wisconsin and on the official service list compiled by the Secretary in Docket No. ER00–1666–000.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER00–2936–000]

Take notice that on June 23, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing executed service agreements for firm point-to-point transmission service, and non-firm point-to-point transmission service under the PJM Open Access Transmission Tariff with The Legacy Energy Group, LLC (Legacy).

Copies of this filing were served upon Legacy and the state commissions within the PJM control area.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. ISO New England, Inc.

[Docket No. ER00–2937–000]

Take notice that on June 26, 2000, ISO New England Inc. (the ISO), tendered for filing pursuant to Section 205 of the Federal Power Act, a request for expedited approval of revisions to the NEPOOL Market Rules 6, 8 and 9 in order to extend existing reserve market limitations through December 31, 2000.

Copies of said filing have been served upon the Secretary of the NPC, the Participants in the New England Power Pool, non-Participant transmission customers and upon the New England State Governors and Regulatory Commissions.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER00–2938–000]

Take notice that on June 23, 2000, Virginia Electric and Power Company (Virginia Power or the Company), tendered for filing the following Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Amended Service Agreement for Firm Point-to-Point Transmission Service designated First Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, First Revised Volume No. 5;
2. Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated First Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Original Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

The Company requests an effective date of May 25, 2000, the date service was first provided to the customer under the amended agreements.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. The Dayton Power and Light Company

[Docket No. ER00–2939–000]

Take notice that on June 23, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing with Allegheny Energy Supply Company, LLC and HQ Energy Services US as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with Allegheny Energy Supply Company, LLC and HQ Energy Services US and the Public Utilities Commission of Ohio.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. The Dayton Power and Light Company

[Docket No. ER00–2940–000]

Take notice that on June 23, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Allegheny Energy Supply Company, LLC and HQ Energy Services US as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon establishing Allegheny Energy Supply Company, LLC and HQ Energy Services US and the Public Utilities Commission of Ohio.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Carolina Power & Light Company

[Docket No. ER00–2941–000]

Take notice that on June 23, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Cinergy Services, Inc. and a Service Agreement for Non-Firm Point-to-Point Transmission Service with Cinergy Services, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of June 20, 2000 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER00–2942–000]

Take notice that on June 23, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a notice that the NSP open access transmission tariff has been modified, effective May 1, 2000, to incorporate the revised Mid-Continent Area Power Pool (MAPP) Line Loading Relief (LLR) procedures proposed in Docket No. ER99–2649–002.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Candela Energy Corporation

[Docket No. ER00–2945–000]

Take notice that on June 21, 2000, Candela Energy Corporation (Candela) petitioned the Commission for acceptance of Candela Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Candela intends to engage in wholesale electric power and energy purchases and sales as a marketer. Candela is not in the business of generating or transmitting electric power. Candela is a privately-owned company without affiliates and is not engaged in any other businesses.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER00–2946–000]

Take notice that on June 26, 2000, Commonwealth Edison Company (ComEd), tendered for filing an unexecuted Interconnection Agreement with Rocky Road Power, LLC (Rocky Road).

ComEd requests an effective date of June 27, 2000 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Rocky Road and the Illinois Commerce Commission.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Metropolitan Edison Company

[Docket No. ER00–2947–000]

Take notice that on June 26, 2000, Metropolitan Edison Company (MetEd)(doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 4 under FERC Electric Tariff Volume No 2, between Metropolitan Edison Company and the Borough of Lewisberry.

MetEd requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Pennsylvania Electric Company

[Docket No. ER00–2948–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of Berlin.

Penelec requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Pennsylvania Electric Company

[Docket No. ER00–2949–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing a Notice of Cancellation of Service Agreement No. 8 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of Hooversville.

Penelec requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Metropolitan Edison Company

[Docket No. ER00–2950–000]

Take notice that on June 26, 2000, Metropolitan Edison Company (MetEd) (doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 5 under FERC Electric Tariff Volume No. 2, between Metropolitan Edison Company and the Borough of Royalton.

MetEd requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Pennsylvania Electric Company

[Docket No. ER00–2951–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 3 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of Smethport.

Penelec requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Pennsylvania Electric Company

[Docket No. ER00–2952–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 7 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of East Conemaugh.

Penelec requests that cancellation be effective December 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Pennsylvania Electric Company

[Docket No. ER00–2953–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing a Notice of Cancellation of Service Agreement No. 9 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric

Company and the Borough of Summerhill.

Penelec requests that cancellation be effective December 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Pennsylvania Electric Company

[Docket No. ER00–2954–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing a Notice of Cancellation of Service Agreement No. 2 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of Girard.

Penelec requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Metropolitan Edison Company

[Docket No. ER00–2955–000]

Take notice that on June 26, 2000, Metropolitan Edison Company (MetEd) (doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 1 under FERC Electric Tariff Volume No. 2, between Metropolitan Edison Company and the Borough of Goldsboro.

MetEd requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Cleco Utility Group Inc.

[Docket No. ER00–2959–000]

Take notice that on June 23, 2000, Cleco Utility Group, Inc., tendered for filling Non-Firm and Short term firm point-to-point transmission service agreements under its Open Access Transmission Tariff with Dynegy Power Marketing, Inc.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Mid-Continent Area Power Pool, Madison Gas and Electric Company

[Docket No. ER00–2960–000]

Take notice that on June 23, 2000, Madison Gas and Electric Company (MGE), tendered for filing Notice of Modification of Tariff in response to the Commission's May 26, 2000 Order Granting Interim Approval in Mid-Continent Area Power Pool (MAPP) Docket ER–2317–000, 91 FERC par. 61,184 (2000). The May 26, Order directed each public utility member of MAPP providing transmission service to file with the Commission a notice that its tariff is modified to incorporate MAPP's proposed line loading relief (LLR) procedures. Accordingly, MGE gave notice that its tariff is deemed modified to incorporate MAPP's LLR procedures.

Copies of the filing have been served on MGE's transmission service customers, on the Public Service Commission of Wisconsin and on the official service list compiled by the Secretary in Docket No. ER00–2317–000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Capital & Trading, Inc., CinCap VI, LLC, Sunbury Holdings, LLC

[Docket No. EC00–109–000]

Take notice that on June 27, 2000, Cinergy Capital & Trading, Inc. (CCT), CinCap VI, LLC (CinCap VI) and Sunbury Holdings, LLC (Sunbury) (collectively, the Applicants), tendered for filing pursuant to Section 203 of the Federal Power Act a joint application for authority for CCT to sell 100 percent of its membership interests in CinCap VI to Sunbury, and to assign CCT's interest in an interconnection agreement with PP&L, Inc. to CinCap VI.

The Applicants request that their joint application be made effective as soon as possible so that the transactions may close by July 31, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Griffiss Local Development Corporation

[Docket No. EL99–73–001]

Take notice that on June 26, 2000, Griffiss Local Development Corporation filed a Notice of Execution of Settlement Agreement Between Oneida County Industrial Development Agency/Griffiss local Development Corporation and Niagara Mohawk Power Corporation.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Fresno Cogeneration Partners, L.P.

[Docket Nos. QF88–134–002 and EL00–87–000]

Take notice that on June 23, 2000, Fresno Cogeneration Partners, L.P. (FCP) filed a request for limited waiver of the operating and efficiency standards of the Commission's regulations for qualifying cogeneration facilities as a result of reduced levels of operation as a result of the ongoing efforts of FCP to restructure the contractual arrangements with its utility purchaser of power.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17210 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1727–002, et al.]

CinCap VI, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 30, 2000.

Take notice that the following filings have been made with the Commission:

1. CinCap VI, LLC

[Docket No. ER99–1727–002]

Take notice that on June 27, 2000, Sunbury Holdings, LLC (Sunbury), on behalf of CinCap VI, LLC (CinCap), tendered for filing a notice of change in status under CinCap's market-based rate authority to reflect Sunbury's acquisition of CinCap from Cinergy Capital & Trading, Inc.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. PJM Interconnection, L.L.C.

[Docket No. ER00–2683–001]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its filing of service agreements in this

docket, adding the required designations.

PJM states that it served a copy of its filing upon all parties to the service agreements and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER00–2709–001]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its filing of the interconnection service agreement between PJM and Commonwealth Chesapeake Company, L.L.C. (Commonwealth) in this docket, adding the required designation.

PJM states that it served a copy of its filing upon Commonwealth, Delmarva Power & Light Company, and the Virginia State Corporation Commission.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. PJM Interconnection, L.L.C.

[Docket No. ER00–2906–001]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its filing of an interconnection service agreement between PJM and Reliant Energy Services, Inc. (Reliant) in this docket, adding the required designation.

PJM states that it served a copy of its filing upon Reliant, the Maryland Public Service Commission, the New Jersey Board of Public Utilities, and the Pennsylvania Public Service Commission.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. PJM Interconnection, L.L.C.

[Docket No. ER00–2936–001]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its filing of service agreements in this docket, adding the required designations.

PJM states that it served a copy of its filing The Legacy Energy Group, LLC and each of the state electric regulatory commissions within the PJM control area.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER00–2943–000]

Take notice that on June 23, 2000, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing the Generator Backup Service Agreement between Mobile Energy Services Company, L.L.C. (MESC) and Southern Companies (the Service Agreement) under Southern Companies' Generator Backup Service Tariff (FERC Electric Tariff, Original Volume No. 9). The Service Agreement supplies MESC with unscheduled capacity and energy in connection with sales from its electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement is dated as of June 16, 2000, and shall terminate upon twelve (12) months prior written notice of either party.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. MidAmerican Energy Company

[Docket No. ER00–2944–000]

Take notice that on June 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Second Amendment to First Amended and Restated Interchange Agreement (Second Amendment), dated May 30, 2000, entered into by MidAmerican and the City of Geneseo, Illinois, pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 28, 2000, for the Second Amendment, and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the City of Geneseo, Illinois, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. CinCap VI, LLC.

[Docket No. ER00–2956–000]

Take notice that on June 27, 2000, CinCap VI, LLC (CinCap VI), tendered for filing pursuant to Section 205 of the Federal Power Act a long-term Power Sale Agreement (PSA) (Original Service Agreement No. 1) with Cinergy Capital & Trading, Inc. (CCT), and a Notice of Cancellation of the same PSA. CCT consents to the cancellation of the PSA.

A Copy of this filing has been served upon CCT.

CinCap VI requests that its filing of the PSA be made effective as of May 1, 1999, and the cancellation of the PSA be made effective as of July 31, 2000, or the date of that CCT's ownership interest in CinCap VI is transferred to Sunbury Holdings, LLC.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER00–2957–000]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing signature pages to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA) for Essential.com, Inc. (Essential.com), and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including Essential.com, and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER00–2958–000]

Take notice that on June 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Dynegy Power Marketing, Inc. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER00–2961–000]

Take notice that on June 27, 2000, Commonwealth Edison Company (ComEd) tendered for filing a Letter Agreement with Rocky Road Power, LLC (Rocky Road). In this Letter Agreement Rocky Road requests that ComEd file an unexecuted Interconnection Agreement between ComEd and Rocky Road (Interconnection Agreement) and agrees to be bound by all terms and conditions of the Interconnection Agreement as such terms may subsequently be modified by the Commission or by an arbitrator's decision pursuant to arbitration under ComEd's Open Access Transmission Tariff (OATT).

Copies of the filing were served on Rocky Road and the Illinois Commerce Commission.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. West Georgia Generating Company L.P.

[Docket No. ER00–2962–000]

Take notice that on June 27, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomaston, Georgia, tendered for filing a Negotiated Contract for the Purchase of Firm Capacity and Energy between West Georgia Generating Company L.P. and Gulf Power Company.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER00–2963–000]

Take notice that on June 27, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing a long-term Service Agreement between Deseret and Constellation Power Source, Inc. Deseret requests that the Commission accept this filing as a service agreement under the Company's Market-Based Rate Tariff, designated Service Agreement No. 5 to FERC Electric Tariff, Original Volume No. 3.

Deseret requests an effective date of June 1, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. West Georgia Generating Company L.P.

[Docket No. ER00–2964–000]

Take notice that on June 27, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomaston, Georgia, tendered for filing a Power Purchase Agreement between West Georgia and Oglethorpe Power Corporation.

West Georgia requests that the Agreement be permitted to become effective June 6, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. West Georgia Generating Company L.P.

[Docket No. ER00–2965–000]

Take notice that on June 27, 2000, West Georgia Generating Company (West Georgia), as successor-in-interest to Cataula Generating Company, L.P., an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomaston, Georgia, tendered for filing a Negotiated Contract for the Purchase of Firm Capacity and Energy between Cataula Generating Company, L.P. and Georgia Power Company.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. West Georgia Generating Company L.P.

[Docket No. ER00–2966–000]

Take notice that on June 27, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomaston, Georgia, tendered for filing a Power Purchase Agreement between West Georgia and Municipal Electric Authority of Georgia.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Minnesota Power, Inc.

[Docket No. ER00–2967–000]

Take notice that on June 26, 2000, Minnesota Power, Inc., tendered for filing a notice that the open access transmission tariff of Minnesota Power, Inc. is modified, effective May 1, 2000, to incorporate the Mid-Continent Area Power Pool's Line Loading Relief procedures.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Indeck-Olean Limited Partnership

[Docket No. ER00–2968–000]

Take notice that on June 27, 2000, Indeck-Olean Limited Partnership submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, its short-term Transaction Agreement Confirmation with Niagara Mohawk Energy Marketing, Inc.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Enron Corp.

[Docket No. ER00–2970–000]

Take notice that on June 26, 2000, Enron Corp. (Enron), tendered for filing notification that Enron is withdrawing from the Southwest Regional Transmission Association effective June 30, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. NorthWestern Public Service Company

[Docket No. ER00–2982–000]

Taken that on June 26, 2000, NorthWestern Public Service Company, a division of NorthWestern Corporation tendered for filing in compliance with the Commission's May 26, 2000, Commission Order in Docket No. ER00–2317–000, notice that the open access transmission tariff of NorthWestern Public Service Company is modified, effective May 1, 2000, to incorporate the Mid-Continent Area Power Pool's Line Loading Relief (LLR) procedures.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17211 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2921–000, et al.]

JPower, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 27, 2000.

Take notice that the following filings have been made with the Commission:

1. JPower, Inc.

[Docket No. ER00–2921–000]

Take notice that on June 13, 2000, JPower, Inc., tendered for filing notice of change in status. JPower requests that the name JPower and JPower's market based rate schedule under ER95–1421–000 be transferred to Great Lakes Energy Trading, LLC effective immediately.

Comment date: July 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Quark Power L.L.C.

[Docket No. ER97–2374–012]

Take notice that on June 21, 2000, Quark Power Service Company (Quark Power), tendered for filing an updated market analysis as required by the Commission's June 6, 1997 order in Docket No. ER97–2374–000 granting Quark Power market-based rate authority.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER00–2783–001]

Take notice that on June 21, 2000, Pacific Gas and Electric Company (the Company), tendered for filing an amendment in FERC Docket No. ER00–2783–000. The Company requests an extension of the termination date of the Interim Short Term Coordination Agreement, as amended, between Pacific Gas and Electric Company and Sacramento Municipal Utility District (SMUD), dated July 28, 1998, Company Rate Schedule FERC No. 201.

Copies of this filing have been served upon SMUD, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Golden Spread Electric Cooperative, Inc.

[Docket No. ER00–2919–000]

Take notice that on June 21, 2000, Golden Spread Electric Cooperative, Inc., tendered for filing an unexecuted service agreement between Golden Spread and Public Service Company of New Mexico under Golden Spread's FERC Electric Tariff, Original Volume No. 1 (Market-Based Rate Tariff).

Golden Spread request an effective date of May 22, 2000, for the service agreement.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Oklahoma Gas and Electric Company

[Docket No. ER00–2915–000]

Take notice that on June 21, 2000, Oklahoma Gas and Electric Company (OG&E), tendered for filing a letter stating that it is adopting the NERC revisions to its TLR procedures approved by the Commission on May 8, 2000 in Docket No. ER00–1666–000, and therefore OG&E' FERC Electric Tariff shall be considered so modified to reflect the revisions described in the Commission order.

A copy of this letter has been served upon the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing 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). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17165 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–107.000, et al.]

Merchant Energy Group of the Americas, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Merchant Energy Group of the Americas, Inc.

[Docket No. EC00–107–000]

Take notice that on June 23, 2000, Merchant Energy Group of the Americas, Inc. (MEGA) tendered for filing an application pursuant to section 203 of the Federal Power Act for authorization of a transaction whereby MEGA will assign certain of its wholesale power sales agreements and associated books and records to Morgan Stanley Capital Group Inc. (Morgan Stanley). MEGA requests waiver of the Commission's filing requirements to permit it to file a redacted portion of Exhibit H and pursuant to 18 CFR 388.112 of the Commission's regulations, on behalf of itself and Morgan Stanley, requests privileged treatment of the remainder of Exhibit H.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Colorado

[Docket No. EC00–108–000]

Take notice that on June 23, 2000, Public Service Company of Colorado (PSCo) filed an application under Section 203 of the Federal Power Act for authorization to dispose of transmission facilities. The specific facilities addressed in the application are two 4/115 kV generation step-up transformers interconnecting the powerhouse of PSCo's Boulder Canyon Hydroelectric Project (Boulder Project) to PSCo's transmission system. In its application, PSCo states that it is transferring these facilities to the City of Boulder, Colorado, as part of its proposed sale of the Boulder Project to that City.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Keystone Lessor Genco LLC

[Docket No. EG00–182–000]

Take notice that on June 26, 2000, Keystone Lessor Genco LLC (Keystone Lessor or Applicant) tendered for filing an application for a determination of exempt wholesale generator status,

pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Keystone Lessor is a Delaware limited liability company. Keystone Lessor will own an undivided interest in a generating facility in Pennsylvania, which is an eligible facility. Keystone Lessor will lease under a net lease its undivided interest in the eligible facility to Reliant Energy Mid-Atlantic Power Holdings, LLC, an exempt wholesale generator.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Shawville Lessor Genco LLC

[Docket No. EG00–183–000]

Take notice that on June 26, 2000, Shawville Lessor Genco LLC (Shawville Lessor or Applicant) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Shawville Lessor is a Delaware limited liability company. Shawville Lessor will own an interest in an eligible facility in Pennsylvania. Shawville Lessor will lease under a net lease its interest in the eligible facility to Reliant Energy Mid-Atlantic Power Holdings, LLC, an exempt wholesale generator.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Conemaugh Lessor Genco LLC

[Docket No. EG00–184–000]

Take notice that on June 26, 2000, Conemaugh Lessor Genco LLC (Conemaugh Lessor or Applicant) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Conemaugh Lessor is a Delaware limited liability company. Conemaugh Lessor will own an undivided interest in a generating facility in Pennsylvania, which is an eligible facility. Conemaugh Lessor will lease under a net lease its undivided interest in the eligible facility to Reliant Energy Mid-Atlantic Power Holdings, LLC, an exempt wholesale generator.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. El Paso Electric Company, El Paso Electric Generating Company, El Paso Transmission and Distribution Company

[Docket No. ES00–46–000]

Take notice that on June 16, 2000, El Paso Electric Company, El Paso Electric Generating Company, and El Paso Transmission and Distribution Company (Applicants) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization for El Paso Transmission and Distribution Company to issue 1,000 shares of common stock, assume First Mortgage Bonds, and to engage in certain other securities transactions necessary to effectuate a corporate reorganization.

Applicants also request a waiver from the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER00–2132–001]

Take notice that on June 22, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing a compliance Interconnection and Operating Agreement with Calcasieu Power, LLC, in accordance with the Commission's order in Entergy Services, Inc., 91 FERC ¶ 61,234 (2000).

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket Nos. ER00–2645–000, ER00–2651–000]

Take notice that on June 22, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC tendered for filing a request to withdraw Market Rate Tariff Service Agreement Nos. 68 and 69 filed at the above dockets.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER00–2922–000]

Take notice that on June 22, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing a Letter of Termination of the Service Agreement between Virginia Electric and Power Company and K N Marketing, Inc. dated July 8, 1996 and approved by the FERC in a letter order on August 23, 1996 in Docket No. ER96–2511–000.

Virginia Power requests that the Letter of Termination be designated as First Revised Service Agreement No. 65 under FERC Electric Tariff, Original Volume No. 4. Virginia Power also respectfully requests an effective date of the termination of the Service Agreement of August 22, 2000, which is sixty (60) days from the date of filing of the Letter of Termination.

Copies of the filing were served upon K N Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER00–2923–000]

Take notice that on June 22, 2000, Pacific Gas and Electric Company (PGandE Company), tendered for filing the Emergency Service Agreement between Pacific Gas and Electric Company and City and County of San Francisco (CCSF). This Agreement is intended to facilitate CCSF's supplying of excess energy to the California Independent System Operator (CAISO) to support reliability of the electric grid in California this summer. Under this Agreement, PGandE Company may relay information from CCSF to the CAISO regarding availability of excess energy ahead of the operating day and pass through payments from CAISO to CCSF. PGandE Company has requested certain waivers.

Copies of this filing have been served upon City, the CAISO, the California Electricity Oversight Board, the CPUC and the Service List for Docket No. EL00–75–000.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Green Valley Hydro, LLC

[Docket No. ER00–2924–000]

Take notice that on June 22, 2000, Green Valley Hydro, LLC (Green Valley), tendered for filing a market rate tariff of general applicability under which it proposes to sell capacity and energy at market-based rates all as more fully described in the application.

Green Valley requests an effective date no later than July 1, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER00–2925–000]

Take notice that on June 22, 2000, Commonwealth Edison Company (ComEd), tendered for filing four Non-Firm Transmission Service Agreements with LSP-Nelson Energy, LLC (LSPN), LSP-Kendall Energy, LLC (LSPK), Split Rock Energy LLC (SRE), and OGE Energy Resources, Inc. (OGE), and eight Short-Term Firm Transmission Service Agreements with LSPN, LSPK, SRE, OGE, Delmarva Power and Light Company (DPL), Northern Indiana Public Service Company (NIPS), Constellation Power Source, Inc. (CPS), and MidAmerican Energy Company (MEC) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests that the Commission substitute the Agreement with NIPS for the unexecuted agreement previously filed under the OATT in Docket No. ER00–2564–000 on May 22, 2000. ComEd requests that the Commission substitute the Agreement with CPS for the unexecuted agreement previously filed under the OATT in Docket No. ER00–2260–000 on April 21, 2000. ComEd requests that the Commission substitute the Agreement with MEC for the unexecuted agreement previously filed under the OATT in Docket No. ER00–2536–000 on May 18, 2000.

ComEd requests an effective date of June 22, 2000, for the non-firm agreements with LSPN, LSPK and SRE. ComEd requests an effective date of April 10, 2000, for the non-firm agreement with OGE to coincide with the first day of service to OGE under this Agreement. ComEd requests an effective date of June 22, 2000 for the short-term firm agreements with LSPN, LSPK, SRE, and OGE, and an effective date of June 1, 2000, for the agreement with DPL, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Kentucky Utilities Company/ Louisville Gas and Electric Company

[Docket No. ER00–2926–000]

Take notice that on June 22, 2000, Kentucky Utilities Company/Louisville Gas and Electric Company (KU/LG&E), 220 West Main Street, Louisville, Kentucky 40202, tendered for filing with the Commission a notice that KU/LG&E will explicitly incorporate the revised transmission loading relief (TLR) procedures developed by the North American Electric Reliability Council (NERC) and approved by the Commission in Docket No. ER00–1666–000, as part of its Open Access Transmission Tariff and Joint Open Access Transmission Tariff.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER00–2927–000]

Take notice that on June 22, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., modifying how PJM will distribute accumulated excess congestion charges.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2928–000]

Take notice that on June 22, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing The Legacy Energy Group, LLC as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of June 15, 2000, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER00–2929–000]

Take notice that on June 22, 2000, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an Interconnection and Operating Agreement with Vulcan Chemical (Vulcan), and a Generator Imbalance Agreement with Vulcan.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER00–2930–000]

Take notice that on June 22, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with MissChem Nitrogen, L.L.C. (MissChem), and a Generator Imbalance Agreement with MissChem.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. American Electric Power Service Corporation

[Docket No. ER00–2931–000]

Take notice that on June 22, 2000, American Electric Power Service Corporation (AEPSC), as agent for the operating utility subsidiaries of American Electric Power Company, Inc., tendered service agreements under which British Columbia Power Exchange Corporation (BC Power) will take service under the AEPSC Open Access Transmission Service Tariff.

AEPSC requests a May 23, 2000 effective date for the agreements. Accordingly, AEPSC requests waiver of the Commission's notice requirements.

AEPSC states that a copy of this filing has been served on BC Power and on affected state utility commissions.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing 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). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17164 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–000]

Williams Gas Pipelines Central, Inc; Notice of New Location for Informal Settlement Conference

June 30, 2000.

The informal settlement conference scheduled for July 11, 2000, in the above-captioned docket has been relocated. The new location for the informal settlement conference is the Andy Kirk Conference Room, 3rd floor, Kansas City Marriot Downtown, 200 West 12th Street, Kansas City, Missouri 64105. The informal settlement conference will begin at 9:30 a.m.

All interested parties in the above dockets are requested to attend the informal settlement conference. If a party has any questions respecting the conference, please call Richard Miles, the Director of the Dispute Resolution Service. His telephone number is 1 877 FERC ADR (337–2237) or 202–208–0702 and his e-mail address is *richard.miles@ferc.fed.us*.

David P. Boergers,

Secretary.

[FR Doc. 00–17212 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

June 30, 2000.

This constitutes notice, in accordance with 18 CFR 385.220(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP00–36–000, 6–6–00, James R. Hartwig
2. CP00–14–000, 5–26–00, Todd Potas
3. CP00–14–000, 6–16–00, Todd Potas

David P. Boergers,

Secretary.

[FR Doc. 00–17171 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[CO–001–0039; FRL–6731–3]

Adequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy determination.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the submitted Denver ozone maintenance plan are inadequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Denver Regional Council of Governments and the U.S. Department of Transportation cannot use the motor vehicle emissions budgets from the submitted Denver ozone maintenance plan for future conformity determinations.

DATES: This document is effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, ph. (303) 312–6479. The letter documenting our finding is available at EPA's conformity website: http://www.epa.gov/oms/transp/conform/adequacy.htm.

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that we have already made. EPA Region 8 sent a letter to the Colorado Air Pollution Control Division on June 19, 2000 stating that the motor vehicle emissions budgets in the submitted Denver ozone maintenance plan are inadequate. This finding has also been announced on EPA's conformity website: http://www.epa.gov/oms/transp/conform/adequacy.htm.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and

establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

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

Dated: June 26, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–17191 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6608–8]

Environmental Impact Statement; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed June 26, 2000 Through June 30, 2000.

Pursuant to 40 CFR 1506.9.

EIS No. 000219, Final EIS, FHW, MO, MO–50/West-Central Corridor Location Study. Transportation Improvements, Sedalia to St. Martins, Pettis, Cooper, Morgan and Moniteau and Cole Counties, MO, *Due:* August 07, 2000, *Contact:* Don Neumann (573) 636–7104.

EIS No. 000220, Final EIS, COE, ID, OH, KY, John T. Myers and Greenup Lock Improvements, To Alleviate Commercial Navigation Traffic Congestion, Ohio River Mainstem Systems Study, (ORMSS), Interim Feasibility Report, Indiana, Kentucky and Ohio, *Due:* August 07, 2000, *Contact:* Veronica Rife (502) 625–7034.

EIS No. 000221, Draft EIS, BLM, WY, Jack Morrow Hills Coordinated Activity Plan, Implementation, Rock Springs, Portions of Sweetwater, Fremont and Subelette Counties, WY, *Due:* October 05, 2000, *Contact;* Renee Dana (307) 352–0256.

EIS No. 000222, Final EIS, NPS, CA, Merced Wild and Scenic River Comprehensive Management Plan, Implementation, Yosemite National Park and the EL Portal Administrative Site, Tuolumne, Merced, Mono, Mariposa and Madera Counties, CA, *Due:* August 07, 2000, *Contact:* Alan Schmierer (415) 427–1441.

EIS No. 000223, Draft EIS, COE, CA, Murrieta Creek Flood Control and Protection, Implementation, Riverside County, CA, *Due:* August 21, 2000, *Contact:* Timothy Smith (213) 452–3854.

EIS No. 000224, Final EIS, TVA, TN, Tim Ford Reservoir Land Management and Disposition Plan Implementation, Tim Ford Reservoir, Franklin and Moore Counties, TN, *Due:* August 07, 2000, *Contact:* Helen Rucker (256) 386–3435.

EIS No. 000225, Draft EIS, COE, CA, Rancho Palos Verdes Restoration Project, Implementation, City of Rancho Palos Verdes, Los Angeles County, CA, *Due:* August 21, 2000, *Contact:* Mr. Rey Farve (213) 452–3864.

EIS No. 000226, Final EIS, TVA, TN, Tellico Reservoir Land Management Plan, Implementation of Seven Mainstream and Two Tributary Reservoirs, Blount, Loudon and Monroe, Tn, *Due:* August 07, 2000, *Contact:* Cheryl Ward (865) 632–1531.

EIS No. 000227, Final EIS, TVA, MS, Union County Multipurpose Reservoir/Other Water Supply Alternatives Project, To Provide an Adequate and Reliable Water Supply, COE Section 404 Permit and NPDES Permit, City of New Alban, Union County, MS, *Due:* August 07, 2000, *Contact:* Charles P. Nicholson (865) 632–3582.

EIS No. 000228, Draft EIS, NPS, CA, Anacapa Island Restoration Project, Implementation Implementation, Channel Islands National Park, Ventura County, CA, *Due:* September 05, 2000, *Contact:* Alan Schmierer (415) 427–1441.

EIS No. 000229, Final EIS, FHW, WV, King Coal Highway Project Construction, from the vicinity of Williamson to the vicinity of Bluefield, COE Section 404 Permit, Mango, McDowell Mercer, and Wyoming Counties, WV, *Due:* August 14, 2000, *Contact:* Thomas J. Smith (304) 347–5928.

EIS No. 000230, Draft Supplement, NOA, Tortugas Marine Reserves Fishery Management Plans Establishment, in Seven Fisheries in the Gulf of Mexico, *Due:* August 21, 2000, *Contact:* James Weaver (727)570–5305.

Amendment Notices

EIS No. 200206, Final EIS, NCP, VA, DC, MD, Adoption—Woodrow Wilson Bridge Replacement, I–95/I–495 From West of Telegraph Road to East of MD Routes 210, City of Alexandria and Fairfax County, VA; Prince George's County, MD and DC, *Due:* July 31, 2000, *Contact:* Eugene Keller (202) 482–7251.

U.S. National Capital Planning Commission (NCPC) has adopted certain portion of the Department of Transportation's Federal Highway Administration FEIS #970356 filed 9–5–97 and FSEIS #000127 filed 4–20–00. NCPC was not a Cooperating Agency for the above final EIS. Recirculation of the document Section 1506.3(b) of the Council is necessary under on Environmental Quality Regulations.

Dated: July 3, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–17271 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6608–9]

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 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–L36113–WA Rating EC2, Upper Charley Subwatershed Ecosystem Restoration Projects, Implementation, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA.

Umatilla National Forest, Garfield County, WA.

Summary: EPA expressed environmental concerns with potential adverse impacts to fish and wildlife populations, including big game and air quality within and surrounding the analysis area. The final EIS should supply information on existing air quality and an analysis of projected air quality impacts.

ERP No. D–AFS–L61223–OR Rating EC2, Mt. Ashland Ski Area Expansion, Implementation, Ashland Ranger District, Rogue River National Forest and Scott River Ranger District, Klamath National Forest, Jackson County, OR.

Summary: EPA expressed concerns with the purpose and need, range of alternatives and potential impacts to water quality, especially Riparian Reserves, and sensitive plants. EPA also commented on the mitigation and monitoring plans, skier demand, and transportation options.

ERP No. D–AFS–L65350 –ID Rating EC2, JJ (Jerry Johnson) Ecosystem Restoration Project, Ranger District (Powell), Idaho County, ID.

Summary: EPA expressed environmental concerns regarding potential adverse impacts of concentrated tree removal, especially old growth, and disturbing highly unstable terrain increasing the risk of sediment delivery to streams. EPA requests that the final EIS further address the ecological impacts, especially cumulative effects, monitoring and CWA Section 303(d) listed waters.

ERP No. D–AFS–L65355–ID Rating EC2 *Summary:* EPA expressed environmental concerns with entry into the Sheep Gulch Roadless Area and potential adverse impacts to water quality, fish and wildlife. The final EIS should clarify how the proposed road treatments will restore soils and hydrologic function, as well as impacts from OHVs and information on landslide events in the project area.

ERP No. D–BLM–L65347–00 Rating EC2, Cascade Siskiyou Ecological Emphasis Area Management Plan, To Maintain, Protect, Restore or Enhance the Ecological Processes, Planning Area for Designation as a National Monument by the President, OR and CA.

Summary: EPA expressed concerns about potential adverse impacts from grazing and OHV use on water quality, soils, sensitive plants and wildlife, especially in non-designated areas.

ERP No. D–SFW–K64019–NV Rating EC2, Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision, Implementation, Churchill and Washoe Counties, NV.

Summary: While EPA supported the preferred alternative, the preferred alternative did not express concerns with the water quality of inflows and management options to help ensure that water entering the wetlands is of sufficient quality to meet water quality standards and protect beneficial uses. EPA urged the Service to commit to implementation of mitigation measures, monitoring, and adaptive management.

ERP No. DS–AFS–J65268–CO Rating EO2, Legislative—DSEIS—North Fork of the South Platte Rivers Wild and Scenic River Study for the Designation or Non-Designation into the National Wild and Scenic Rivers System, Pike and San Isabel National Forests, Comache and Cimarron National Grasslands, Douglas, Jefferson, Park and Teller Counties, Co.

Summary: EPA expressed environmental objections with the selection of the ''not suitable'' alternative, lack of implementing documents, and absence of protection for recognized attributes of the North Fork.

Final EISs

ERP No. F–AFS–K65345–CA Pendola Fire Restoration Project, Implementation, Tahoe National Forest, Downieville Ranger District, Yuba County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–L65331–WA Whitman Mission National Historic Site, General Management Plan, Development Concept Plan, Implementation, Walla Walla County, WA.

Summary: EPA expressed lack of objections with the proposed action.

ERP No. F–SFW–K05056–CA High Desert Power Project, Construction and Operation, A Combined-Cycle Natural Gas-Fueled Electrical Generation Power Planet, Approval of Incidental Taking Authorization under Sections 7 and 10 of the Federal ESA, San Bernardino County, CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 3, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities

[FR Doc. 00–17272 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6731–1]

Technical Workshop on Issues Associated With Considering Developmental Changes in Behavior and Anatomy When Assessing Exposure to Children

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Meeting.

SUMMARY: EPA is announcing that ERG, a contractor to EPA's Risk Assessment Forum, is organizing, convening, and conducting a workshop for external scientific peer consultation on issues related to the assessment of childhood exposure. The workshop is being held to discuss issues associated with how to consider important developmental changes in behavior and anatomy when assessing the exposure of children to environmental contaminants.

DATES: The workshop will be held from 8:30 a.m. to 5 p.m. on Wednesday, July 26, 2000 and from 8 a.m. to 4 p.m. on Thursday, July 27, 2000.

ADDRESSES: The workshop will be held at the Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC. Eastern Research Group, Inc., an EPA contractor, will convene and facilitate the workshop. To register to attend the workshop as an observer, contact Eastern Research Group, Inc., Tel: (781) 674–7374, or visit their HomePage at *http://www.erg.com/conf/epa.htm* by July 19, 2000. Space is limited so please register early.

FOR FURTHER INFORMATION CONTACT: For further information concerning the workshop on age groups for assessing exposure to children please contact Steven Knott, U.S. EPA Office of Research and Development (8601–D), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Telephone (202) 564–3359.

SUPPLEMENTARY INFORMATION: The 1993 National Academy of Sciences (NAS) report ''Pesticides in the Diets of Infants and Children'' highlights important differences between children and adults with respect to risks posed by pesticides. Some of the principles in the NAS report provided the foundation for the Food Quality Protection Act of 1996 (FQPA) and the President's Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risk. FQPA requires the consideration of aggregate exposure to children when establishing pesticide tolerances (legal limits for residues in food). Executive Order 13045 broadens

consideration of impacts on children by stating that ''each Federal agency: shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.'' Many of the comments the EPA received on the Proposed Guidelines for Carcinogen Risk Assessment relate to the implementation of Executive Order 13045. In response to these comments and regulatory initiatives, EPA has been investigating ways to improve Agency risk assessments for children.

An Agency workgroup convened under the auspices of the Risk Assessment Forum has been exploring children's exposure assessment issues. This workgroup has concluded that a major issue facing Agency assessors is how to consider age related changes in behavior and physiology when preparing exposure assessments for children. Children's behavior changes over time in ways that can have an important impact on exposure. Further, children's physiology changes over time in ways that can impact both their exposures and their susceptibility to certain health effects. There are two aspects to these physiological changes. First, there are anatomical changes resulting from physical growth. Second, there are changes in pharmacokinetics and pharmacodynamics which affect the absorption, distribution, excretion and effects of environmental contaminants. The Agency is examining the pharmacokinetic/pharmacodynamic changes in children through other efforts and future meetings on this topic are anticipated. This ERG hosted workshop will focus on incorporating age related changes in behavior and anatomy into Agency exposure assessments.

Dated: June 29, 2000.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 00–17189 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–940; FRL–6556–8]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–940, must be received on or before August 7, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–940 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8733; e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–940. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–940 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services

Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov,''* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–940. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, AgriVir, LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by AgriVir, LLC and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

AgriVir, LLC

OF6113

EPA has received a pesticide petition 0F6113 from AgriVir, LLC, 1625 K Street, NW., Washington DC 20006, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide in or on *Indian Meal Moth Granulosis Virus* commodity.

A. Product Name and Proposed Use Practices

The product which contains the microbial pest control agent which is the subject of the present petition for a tolerance exemption is ''FruitGuard-V'' or ''NutGuard-V'' (these are alternate names for the same product). This product is a biological insecticide intended to control Indian meal moth, a serious pest of various stored commodities. The product will be used as a protectant for stored, dry commodities such as dried fruits, and nuts, and for crack treatment of facilities where such commodities are handled.

The Indian meal moth (IMM), is a serious cosmopolitan pest of dried commodities. Infestation can occur at any time from harvest to eventual consumption of the commodity. IMM is estimated to be responsible for approximately 90% of the damage done to dried fruits and nuts in storage. In facilities where these types of commodities are handled, fragments and other debris from the commodities get into cracks, crevices, and other places and IMM propagates on this material. This establishes a general infestation and reservoir for the Indian meal moth in such facilities.

Control of IMM by FruitGuard-V/NutGuard-V is by means of a naturally occurring microbial pest control agent (MPCA) which is contained in the product. This MPCA is a granulosis virus (GV) which infects the larvae of the IMM. This virus is, thus, designated as Indian Meal Moth Granulosis Virus (IMMGV). The IMMGV contained in NutGuard-V/FruitGuard-V is a naturally occurring isolate of the IMMGV and has not been genetically modified.

In FruitGuard-V/NutGuard-V, the amount of IMMGV (the MPCA ion in the product) is very small in terms of weight percent. The bulk of the product is, in fact, milled wheat bran (96%$^{+}$) and brewers yeast (ca. 3%) to which have been added some vitamins (0.1%) and antioxidants (0.4%). All of these carrier ingredients are either OPP List 4A inerts[1], are tolerance exempted under 40 CFR 180.1001, and/or are generally recognized as safe (GRAS) or otherwise approved for direct food use under 21

[1] Per U.S. EPA/OPP: ''List 4A inert ingredients are considered to be minimal risk inert ingredients. List 4A is generally reserved for those substances that are common foods or substances that are ubiquitous in nature and are not expected to present a hazard to human health or the environment.''

CFR part 184 section 184.1 subpart B pp.446-543.

The product is produced as a milled powder and has the physical appearance of a coarse, off-white to tan powder. Due to the physical characteristics of the powder and of the milled wheat bran which constitutes the bulk of the product, this product does have a potential for producing mild, temporary eye irritation. This has been tested in an eye irritation study which has been submitted by AgriVir in support of this application. The product's labeling, therefore, carries a warning in regard to eye irritation potential.

1. The product can be applied dry or in water suspension. For the latter, it is suspended in water at a concentration of from 2 oz to 4 oz per 10 gallons of water. This provides for a sprayable suspension.

2. The proposed application rate for dried fruits and for nuts is from 30 grams (1 oz) to 140 grams (5 oz) product/ton of commodity to be protected.

3. The proposed application rate for crack, crevice, and surface spot treatments is from 60 grams (2 oz) to 300 grams (10 oz) product/100 square feet.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* This is a microbial pesticide in which the MPCA is IMMGV. This is a naturally occurring insect virus which produced a pathogenic condition termed ''granulosis'' in larvae of the IMM. Since IMMGV cannot be propagated other than in insect larvae, the pesticide product itself consists of IMMGV viral particles contained in body parts from infected larvae, all of which is mixed in with the wheat bran diet mixture upon which the infected larvae were grown. The residues which would result are:

i. The infected larval parts containing virus.

ii. The wheat bran larval diet mixture.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* The rate of application for this pesticide product is from 1 oz to 5 oz product per ton of treated commodity. The product contains > 0.01% MPCA by weight (expressed for this purpose as viral particles). The MPCA is not metabolized in or on the commodity after application. Therefore, at the maximum application rate, maximum MPCA residues will be > 0.00013% or (> 1.3 parts per billion (ppb)). At the lower rate of application residues will be less than 0.26 ppb.

3. *Analytical method.* A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed. No analytical method is required because:

i. This application is for a tolerance exemption.

ii. Any method which could be developed to detect IMMGV at the very low maximum levels noted above would be a molecular biology method requiring specialized equipment and procedures not readily available in enforcement laboratories.

It is noted that microbial pet control agents which do not trigger Tier II toxicology concerns do not trigger specific residue chemistry requirements. A brief summary of the identity of the microbial pest control agent IMMGV follows:

AgriVir, LLC has applied to EPA for registration of its microbial pest control product ''FruitGuard-V/NutGuard-V'' (these are alternate names for the same product). This is a biological insecticide intended to control IMM, a serious pest of various stored commodities. The IMM, is a serious cosmopolitan pest of dried commodities. Infestation can occur at any time from harvest to eventual consumption of the commodity. IMM is estimated to be responsible for approximately 90% of the damage done to dried fruits and nuts in storage. In facilities where these types of commodities are handled, fragments and other debris from the commodities gets into cracks, crevices, and other places and IMM propagates on this material. This established a general infestation and reservoir for the IMM in such facilities.

Control of IMM by FruitGuard-V/NutGuard-V is by means of a naturally occurring microbial pest control agent (or MPCA) which is contained in the product.

The MPCA used in NutGuard-V/FruitGuard-V is a Granulosis Virus which infects the larvae of the IMM. This virus is designated IMMGV in the balance of this summary. The MPCA contained in NutGuard-V/FruitGuard-V is a naturally occurring isolate of the IMMGV. It has not been genetically modified.

IMMGV has no hosts other than larvae of the IMM and acts by making the IMM larvae sick, rather than by a toxic mechanism (i.e., IMMGV does not produce any specific toxin which kills the larvae). IMM larvae succumb to granulosis disease due to serious damage to one of their major organs for storage of nutrients.

The above-cited products are equivalent to a technical grade of IMMGV. They are prepared without isolation of IMMGV and, as such, the MPCA which is the subject of the present petition consists, therefore, of IMMGV occlusion bodies (''viral particles'') and Indian meal moth larval parts mixed into a production larval diet containing wheat bran, brewer's yeast, vitamins, methyl paraben, and sorbic acid.

C. Mammalian Toxicological Profile

The mode of action for IMMGV in its host, the larval stage of *P. interpunctella*, is pathogenic in nature. IMMGV produces granulosis disease in the larvae of *P. interpunctella*. ''Granulosis'' disease is so named because cells in infected tissue sections, when observed under light microscopy, are full of minute, refractile bodies termed ''granules.'' The initial signs of granulosis disease occur several days after larval ingestion of the viral occlusion bodies and consist of sluggishness and loss of appetite. These initial signs are followed by a change in the appearance of the larvae. They are normally light brown and semilucent, but when infected become opaque and white. This change is the result of the massive accumulation of viral occlusion bodies in the fat body of the infected larva. The fat body is the site of intermediary metabolism in these larvae and it is in the fat body that fat, protein, and glycogen are primarily stored. The pathogenicity of IMMGV to the larva results from the mode of viral release from cells of the fat body. This release occurs by rupture of the cells of the fat body, thereby leading to degeneration and necrosis of the fat body and, ultimately, death of the infected larva. The mode of action is distinct from a toxicity based mode of action. That is, unlike some microbial pest control agents which produce endo-toxins or exo-toxins which act to kill the target pest, IMMGV produces no toxins as part of its mode of action.

IMMGV is a member of the class of insect viruses known as baculoviruses. There are two known types of baculoviruses: polyhedrosis viruses and granulosis viruses. There is currently no baculovirus known to infect or replicate in any vertebrate host. Among invertebrates, IMMGV itself has no known host other than larvae of *P. interpunctella* and has been shown not to cross-infect lepidopteran or other insects other than *P. interpunctella*.

A number of studies on the toxicity of baculoviruses, inclusive of granulosis viruses, to animals have shown that these agents produced no effects on overall health, gross or micro pathology, hematology, clinical chemistry, and antibody stimulation occur in test animals when exposure is by the oral, dermal, inhalation, and injection routes

of exposure and either single exposure or repeated exposure. These studies have been published in the open literature and were submitted as part of AgriVir, LLC's petition.

Cell culture studies (submitted by AgriVir as part of its submission) have shown that IMMGV which is actively infective and pathogenic to IMM larva, does not produce cytotoxicity in nor does it replicate in or produce pathogenicity in human embryonic lung cells, human embryonic skin cells, and monkey kidney cells. These cell lines are relevant to the safety assessment of IMMGV with regard to hazard potential to humans and domestic animals because the first two (lung and skin) represent tissues which would be the first points of contact with/attack by IMMGV and the renal line is a representative of an organ which can receive parenteral exposure and which can easily harbor infections.

Due to the physical properties of the final product and of the bran carrier, the technical MPCA does have a mild, rapidly reversible eye irritation potential. An eye irritation study has been conducted to further characterize this potential. It is summarized below.

Primary eye irritation. Due to the physical properties of the final product and of the bran carrier, the technical MPCA is expected to have a mild to moderate, reversible eye irritation potential. This has been confirmed in a rabbit eye irritation study sponsored by AgriVir, LLC. Six healthy New Zealand white rabbits (4 males and 2 females) each received 0.1 mL of the IMMGV product placed into the conjunctival sac of their right eye. The upper and lower lids were held together for approximately 1 second. In each test animal, the left eye served as an untreated control. Ocular irritation was evaluated by the Draize *et al*. A 1 hour post-instillation six to six treated eyes showed conjunctival irritation and one to six showed irritation of the iris. No treated eyes showed corneal effects at 1 hour post-instillation. The mean irritation score for treated eyes was 11.5 out of 110 maximum possible. At 24 hrs, the incidence of treated eyes which exhibited conjunctival irritation was five to six with one to six showing irritation of the iris. Also, at 24 hrs three to six treated eyes showed some signs of corneal opacity. This was grade 1 (scattered or diffuse, details of iris clearly visible) with respect to intensity and grade 1 with respect to area (or = to 1/4 of the cornea involved) in each case. The corneal score in each eye which exhibited corneal opacity was 5 out of a maximum possible 80 for corneal effects alone. The mean irritation score at 24 hrs was 8.3 out of a maximum possible 110. At 48 hrs post-instillation, the incidence of treated eyes which exhibited conjunctival irritation was one to six with one to six also showing irritation of the iris. Also, at 48 hrs three to six treated eyes still showed some signs of corneal opacity (same animals as at 24 hrs). This was still grade 1 with respect to intensity and grade 1 with respect to area in each case. The corneal score in each eye which exhibited corneal opacity was 5 out of a maximum possible 80 for corneal effects alone. The mean irritation score at 48 hrs was 4.3 out of a maximum possible 110. By 72 hours post-instillation, no treated eyes exhibited conjunctival or irineal irritation, but two to six treated eyes still showed a minimal corneal effect (two of the animals which had exhibited the same effects at 24 hrs and 48 hrs, still scored 1 for intensity and 1 for area; therefore, 5 out of a possible 80 for each animal). The mean irritation score at 72 hrs was 1.7 out of a maximum possible 110. By day 4 (96 hrs) post-instillation, all treated eyes were free of conjuctival irritation, irineal irritation, and corneal effects. The mean irritation score at day 4 was 0 out of a maximum possible 110. The highest mean irritation score reported (11.5 at 1 hour post-instillation) would be classified as ''mildly'' irritating per the Draize evaluation method. This score itself would normally be classified as ''minimally'' irritating, but the absence of complete resolution by 72 hrs requires a one-level increase in the descriptor. The fact that the corneal effects seen were minimal in both intensity and area, were seen in only half of the treated eyes, and resolved fairly rapidly (by 96 hours) suggests that these were probably due to simple mechanical abrasion by the solid test article after instillation into the treated eyes.

D. Aggregate Exposure

1. *Dietary exposure.— i. Food*. The levels of residues in treated commodities will be very low. The application rates for IMMGV are from 1/5 ounces of formulated (i.e., technical) MPCA per ton of commodity to be treated. Maximum theoretical residue concentrations will not, therefore, exceed 1.3 ppb for the MPCA. The types of commodities which are potentially to be treated with IMMGV represent less than 1% of the average total daily diet. With a 2 kilograms (kg) total daily diet the maximum theoretical average dietary exposure to the MPCA is <0.026 (μg)/day. Since IMMGV is a naturally occurring insect virus, there is some, not readily quantifiable, baseline exposure in the daily diet.

ii. *Drinking water*. The proposed use patterns for IMMGV are for indoor food and non-food uses. Therefore, there is no potential for drinking water exposure associated with the approval of this petition.

2. *Non-dietary exposure*. IMMGV only has pest control utility in the treatment of commodities for control of IMM. Therefore, the only potential for non-dietary exposure is to applicators and to mixer/loaders who will use product containing IMMGV. These non-dietary exposures are not covered within the Food Quality Protection Act (FQPA) and they are expected to be low. Information already in EPA's data bases which had been cited by AgriVir, LLC indicates that workers involved with baculovirus production and use do not experience adverse effects as a result of these exposures.

E. Cumulative Exposure

Due to its mechanism of action and extremely limited host specificity, it can be reliably stated that IMMGV does not share a common mechanism of action with any other conventional, biochemical, or microbial pesticide.

F. Safety Determination

1. *U.S. population*. Since the available information reliably supports that IMMGV will not produce adverse effects in humans of any age as a result of exposure by ingestion, dermal contact, or inhalation, AgriVir, LLC concludes that there is a reasonable certainty that no harm to the general adult population, including sensitive individuals, will result from dietary exposure to residues which could occur as a result of approval of this petition.

2. *Infants and children*. Since the available information reliably supports that IMMGV will not produce adverse effects in humans of any age as a result of exposure by ingestion, dermal contact, or inhalation, AgriVir, LLC concludes that there is a reasonable certainty that no harm to infants and children will result from dietary exposure to residues which could occur as a result of approval of this petition.

G. Effects on the Immune and Endocrine Systems

There is no reliable information to indicate that IMMGV has a potential to produce adverse effects on the immune or endocrine systems. In fact, the available studies establish that IMMGV is essentially biologically inactive in any organism other than its natural host, the larva of the Indian meal moth. Due to the natural occurrence and endemic

infestation of dry commodities by the IMM, IMM larval parts and the IMMGV are historically a part of the human diet (although one of which most persons are unaware). Animal safety studies on a closely related granulosis virus (which have been submitted by AgriVir, LLC as part of the support for its registration application and the present tolerance exemption petition) showed, that after inhalation exposure of guinea pigs to an atomized mist containing 2 x 10^{11} granulosis virus (GV) particles (''granula'')/L of air, no antibodies to the granula were observed to form and no changes in blood proteins were found. Also, there were no signs of toxicity or other adverse effects noted during the 21–day post-exposure observation period. On pathology, no irritation of lungs or airways was found. This study further supports lack of an IMMGV hazard potential with regard to the immune system. In a different study with the same closely related GV, multiple dose feeding of a total of 5 x 10^{11} granula/mouse, divided into 34 equal doses given every third day over 99 days produced:

1. No signs of toxicity or other adverse effects.

2. No effect on hematology parameters when checked at 45 days and at 99 days.

3. No remarkable pathology findings on terminal sacrifice.

4. No evidence for increased chromosome aberrations were found. This study further supports the lack of an IMMGV hazard potential with regard to the endocrine system.

H. Existing Tolerances

There are no existing tolerances for IMMGV (the MPCA). The present petition is for the establishment of an exemption from a tolerance.

All of the intentionally added inerts in NutGuard-V/FruitGuard-V are either OPP List 4A inerts, are tolerances exempted under 40 CFR 180.1001, and/or are GRAS or are otherwise approved for direct food use under 21 CFR part 184 section 184.1 subpart B pp. 446-543. Therefore, all of the inert ingredients in FruitGuard-V/NutGuard-V are already tolerance exempted and/or are cleared for indirect food contact as a result of their incidental entry into commodities.

I. International Tolerances

There are no Codex maximum residue levels established for residues of IMMGV. IMMGV containing products are presently not registered for pest control outside of the United States.

[FR Doc. 00–17072 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 3, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0025.

Title: Application for Restricted Radiotelephone Operator Permit—Limited Use.

Form No.: FCC Form 755.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 1,000.

Estimated Time Per Response: .33 hours or 20 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 330 hours.

Total Annual Cost: $45,000.

Needs and Uses: Applicants must possess certain qualifications in order to qualify for a radio operator license. The data submitted on FCC Form 755 aids the Commission in determining whether the applicant possess these qualifications. The data will be used to identify the individuals to whom the license is issued and to confirm that the individuals possess the required qualifications for the license. If the data were not collected, it would be impossible to identify the person to whom the license was issued.

This form is being revised to include the FCC Registration Number (FRN) which is required from anyone doing business with the Commission.

OMB Control No.: 3060–0481.

Title: Application for Renewal of Private Radio Station License.

Form No.: FCC Form 452R.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 2,700.

Estimated Time Per Response: .166 hours or 10 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 448 hours.

Total Annual Cost: $338,000.

Needs and Uses: In accordance with FCC Rules, Aviation Ground and Marine Coast Radio Station licensees are required to apply for renewal of their radio station authorization every five years. The FCC Form 452R will be used for that purpose. FCC staff will use the data to determine eligibility for a renewed radio station authorization, and to issue a radio station license. The data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolution purposes.

The form is being revised to collect the FCC Registration Number (FRN) which is required from anyone doing business with the Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17250 Filed 7–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 30, 2000.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0611

Title: Section 74.783, Station Identification

Form Number: N/A

Type of Review: Extension of a currently approved collection

Respondents: Business or other for-profit entities; State, local, or tribal government

Number of Respondents: 200

Estimate Time Per Response: 0.166 hours (10 mins.)

Frequency of Response: On occasion reporting requirements; Third party disclosure

Total Annual Burden: 33 hours

Total Annual Costs: None

Needs and Uses: The FCC eliminated the call sign requirements from this information collection for which it now has approval under OMD Control No. 3060–0188. Under this revised collection, television translator stations, whose station identification is made by the television station whose signals are being rebroadcast by the translator, must furnish current information on the translator's call letters and location, and the name, address, and telephone number of the licensee to be contacted in the event the translator malfunctions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17251 Filed 7–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1389]

800 MHz Specialized Mobile Radio (SMR) Service in the General Category Band (851–854 MHz) and Upper Band (861–865 MHz) Pre-Auction Seminar, Friday, July 7, 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a free pre-auction seminar scheduled for Friday, July 7, 2000. This seminar will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC remote bidding software.

DATES: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Sanderson of the Auctions Operations Branch at (717) 338–2888, or for Press Inquiries, Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released June 23, 2000. The complete text of the public notice, including the registration form, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. The free seminar for the 800 MHz Specialized Mobile Radio (SMR) Service (Auction No. 34) is scheduled for Friday, July 7, 2000. Interested parties must pre-register using the registration form or by calling the FCC's Auctions Hotline at (888)–225–5322, and select option #2, or (717) 338–2888.

2. The seminar will be held at the Federal Communications Commission, 445 12th Street SW, Washington, DC. Registration will begin at 8:30 a.m. and the program will end by 4:00 p.m.

Potential bidders in the auction are strongly encouraged to attend. This seminar provides an opportunity for hands-on demonstrations of the FCC filing and bidding software and access to the FCC staff responsible for the 700 MHz band licensing and auction conduct procedures. It is strongly advised that all potential bidders review the public notices released for this auction prior to the seminar.

3. The following is a timeline of the important events prior to the auction start date:

Deadline to register for Pre-Auction Seminar: July 6, 2000
Seminar Date: July 7, 2000
Short Form Application (FCC Form 175): July 17, 2000, 6:00 p.m. ET
Upfront Payments (via wire transfer): July 31, 2000, 6:00 p.m. ET
Orders for Remote Bidding Software: August 1, 2000, 5:30 p.m. ET
Mock Auction: August 14, 2000
Auction Start Date: August 16, 2000

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Division.

[FR Doc. 00–17252 Filed 7–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2422]

Petition for Reconsideration of Action in Rulemaking Proceeding

June 30, 2000.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must

be filed by July 24, 2000. 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 has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Sections (Littlefield, Arizona) (MM Docket No. 99–282, RM–9710).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17253 Filed 7–6–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, July 12, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 5, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–17290 Filed 7–5–00; 10:17 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of The Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period perior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans. No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—05/23/2000			
20003000	Sulzer AG	A. Ahlstrom Corporation	Ahlstorm Pumps Corporation
20003015	Vitesee Semiconductor Corporation	SiTera Incorporated	SiTera Incorporated
20003031	Leap Wireless International, Inc	J. Donald G. Garvey	Radiofone PCS, L.L.C.
20003032	Leap Wireless International, Inc	Lawrence D. Garvey	Radiofone PCS, L.L.C.
20003037	Alcatel	Sonoma System, Inc	Sonoma System, Inc.
20003042	AT&T Corp	Holding Company	Holding Company
20003043	Holding Company	AT&T Corp	AT&T Wireless PCS Inc.
20003044	Tritel, Inc	TeleCorp PCS, Inc	TeleCorp PCS, Inc.
20003045	TeleCorp PCS, Inc	Tritel, Inc	Tritel, Inc.
20003074	Tribune Company	Classified Ventures, Inc	Classified Ventures, Inc.
20003076	Tribune Company	CareerPath.com, Inc	CareerPath.com, Inc.
20003079	Wesley Guylay Capital Management, L.P.	Monaco Coach Corporation	Monaco Coach Corporation
20003085	TCV IV, L.P	eLoyalty Corporation	eLoyalty Corporation
20003088	Tritel, Inc	Digital pcs, LLC	Digital pcs, LLC
20003096	Morrison Knudsen Corporation	Raytheon Company	Raytheon Engineers & Constructors
20003103	FairPoint Communications, Inc	Fremont Telecom Co	Fremont Telecom Co.
20003111	Longwood Industries, Inc	Joel P. Wyler	Eagle-Picher Industries, Inc.
20003112	Marital Trust #2	Automotive Systems International, Inc	Automotive Systems International, Inc.
20003115	InSight Health Services Corp	US Diagnostic Inc	Wilkes-Barre Imaging
20003136	Alcatel	Ironbridge Networks Incoporated	Ironbridge Networks Incoporated
20003146	Time Warner, Inc	Electronic Newstand, Inc	Electronic Newstand, Inc.
20003147	BICC USA, Inc	Stout Group Limited	Stout Group Limited
20003150	Chase Manhattan Corporation (The)	Formus Communications, Inc	Formus Communications, Inc.
20003198	Cecilia Ronchetti	Uponor Oyj	Asko Cylinda AB
TRANSACTIONS GRANTED EARLY TERMINATION—05/24/2000			
20003149	Caisse de Depot et placement du Quebec.	Formus Communications, Inc	Formus Communications, Inc.
20003153	Ixchange Technology Holdings	Masterpack International Holdings, Inc	Masterpack International Holdings, Inc.
20003163	Reuters Group PLC	Primark Corporation	Yankee Group Research, Inc.
20003189	Stephen A. Wynn	Starwood Hotels & Resorts Worldwide, Inc.	Starwood Hotels & Resorts Worldwide, Inc.

Trans. No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—05/25/2000			
20003007	Bruckman, Rosser, Sherill & Co., L.P.	M. Francois Pinault	El Torito Franchising Company, El Torito Restaurants, Inc.
20003033	GN Great Nordic AS	Beltone Electronics, Inc.	Beltone Electronics, Inc.
20003071	University Hospitals Health System, Inc.	Primary Health Systems, Inc., Debtor in Possession.	PHS Cleveland, Inc. Primary Health Systems of Ohio, L.P., PHS Mt. Sinai, Inc.,
20003122	Greylock Equity Limited Partnership	Acta Technology, Inc.	Acta Technology, Inc.
20003124	Paine Webber Group, Inc.	J.C. Bradford & Co., LLC	J.C. Bradford & Co., LLC
20003131	Texaco Inc.	Energy Conversion Devices, Inc.	Energy Conversion Devices, Inc.
20003132	Tyco International Ltd.	Lloyd M. Gordon and Diane R. Gordon	Amcel Corp.
20003134	Aktiebolaget Electrolux	E–LUX Holdings, L.L.C.	Electrolux, LLC
20003137	Florida Rock Industries, Inc.	Southern Concrete Construction Co., Inc..	Southern Concrete Construction Co., Inc.
20003139	Louisiana Pacific Corporation	David V. Holli	Sawyer Lumber Company, LLC
20003144	MacDermid, Incorporated	VirtualFund.com, Inc.	VirtualFund.com, Inc.
20003165	Health Management Associated, Inc.	Catholic Health Initiatives	BR Investments, Inc. Neumann Services, Inc. St. Joseph Regional Health Network
20003188	AT&T Corp.	Priceline WebHouse Club, Inc.	Priceline WebHouse Club, Inc.
20003192	Peregrine Systems, Inc.	Harbinger Corporation	Harbinger Corporation
20003195	Brambles Industries Limited	National Recovery Systems, Inc	National Recovery Systems, Inc.
20003207	SDL, Inc.	Photonic Integration Research, Inc.	Photonic Integration Research, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/26/2000			
20003034	ATX Telecommunications Services, Inc.	Voyager.net, Inc.	Voyager.net,Inc.
20003036	RCBA Strategic Partners, L.P.	CB Richard Ellis Services, Inc.	CB Richard Ellis Services, Inc.
20003068	Marsh & McIennan Companies, Inc.	David A. Nadler	Delta Consulting Group, Inc.
20003078	Swiss Reinsurance Company	Industrial Life Insurance Company	North West Life Assurance Company of America
20003099	GTCR Fund VI, L.P.	Genesis Eldercare Corporation	Genesis Eldercare Corporation
20003108	Isle of Capri Casinos, Inc.	Hilton Hotels Corporation	Flamingo Hilton Riverboat Casino, L.P.
20003130	Michael A. Karp	CoreComm Limited	CoreComm Limited
20003148	Alberta Energy Company Ltd.	McMurry Energy Company	McMurry Oil Company
20003162	Rosemore, Inc.	Crown Central Petroleum Corporation	Crown Central Petroleum Corporation
20003164	Charles B. Wang	Howard P. Milstein	New York Islanders Hockey Club, L.P.
20003166	CRH plc	Hanson plc	Acme Materials and Construction Company
20003171	David H. Murdock	Dole Food Company, Inc.	Dole Food Company, Inc.
20003173	Sunglass Hut International, Inc.	Watch World Licensing Corp.	Watch World Licensing Corp.
20003177	Yaskawa Electric Corporation	David Benson	Huntair Inc.
20003178	M–L Holdings, Inc.	Wayne C. Oldenburg	Contractors Machinery Company, Inc.
20003187	Spartan Stores, Inc.	Seaway Food Town, Inc.	Seaway Food Town, Inc.
20003191	Adventist Health System Sunbelt Healthcare Corporation.	Puerto Rican Union Conference	Bella Vista Yauco, Inc.
20003196	Coloniale S.r.1.	Delicious Brands, Inc.	Delicious Brands, Inc.
20003197	Hewlett-Packard Company	Saliente 3 Communications, Inc.	Saliente 3 Communications, Inc.
20003201	HeadHunter.NET	Omnicom Group, Inc.	Career Mosaic, Inc.
20003202	Omnicom Group, Inc.	HeadHunter.NET	HeadHunter.NET
20003206	MDU Resources Group, Inc.	Kinder Morgan, Inc.	K N Gas Gathering, Inc.
20003208	TeleCorp PCS, Inc.	Kailas J. Rao	Indus, Inc.
20003209	ChipPAC, Inc.	Intersil Holding Corporation	Intersil Technology Sdn. Bhd.
20003212	Leeds Equity Partners III, L.P.	James R. Leininger, M.D.	FOCUS Direct, Inc.
20003219	SuperGen, Inc.	AVI BioPharma, Inc.	AVI BioPharma, Inc.
20003220	Tyco International, Ltd.	Hub Fabricating Company	Hub Fabricating Company
20003221	E.I. du Pont de Nemours & Company	Michael Jaharis	Kos Pharmaceuticals, Inc.
20003246	First Union Corporation	Founders Financial Group, L.P.	Forum Capital Markets, L.L.C.
TRANSACTIONS GRANTED EARLY TERMINATION—05/30/2000			
20003030	Internet Capital Group, Inc.	Purchasing Systems, Inc.	Purchasing Systems, Inc.
20003223	Dynegy Inc.	Canton Fitzgerald, L.P.	eSpeed, Inc.
20003228	Zany Brainy, Inc.	Noodle Kidoodle, Inc.	Noodle Kidoodle, Inc.
20003230	Summit Capital II, L.P.	Rentokil Initial plc	BET Personnel Services, Inc.
20003231	UBS Capital Americas II, LLC	Netrail, Inc.	Netrail, Inc.
20003235	Cletes O. Beshears	Allen A. Meyer	Milk Products Delaware LLC, Milk Products Operating Co., LLC
20003242	Entrust Technologies Inc.	EnCommerce, Inc.	EnCommerce, Inc.
20003244	Macroni plc	Thrucomm, Inc.	Thrucomm, Inc.
20003245	Jaco Electronics, Inc.	Brendon J. Perry	Interface Electronics Corporation
20003253	General Electric Company	Newco	Newco
20003256	The Allstate Corporation	Victor Automotive Products, Inc.	Victor Automotive Products, Inc.

Trans. No.	Acquiring	Acquired	Entities
20003263	CRH plc	Dolomite Products Company, Inc.	Dolomite Products Company, Inc.
20003264	MDU Resources Group, Inc.	Meredith Reiter	Empire Sandi & Gravel Co., Inc.
20003265	Svenska Cellulosa Aktiebolaget SCA (publ).	Johnson & Johnson	McNeil-PPC, Inc.
20003289	Deutsche Bank AG	National Discount Brokers Group, Inc.	National Discount Brokers Group, Inc.
20003301	Capital Z Financial Services Fund II, L.P.	News Alert Investors LLC	NewsAlert, Inc.
20003306	The Prudential Insurance Company of America.	The WMF Group, Ltd.	The WMF Group, Ltd.
TRANSACTIONS GRANTED EARLY TERMINATION—05/31/2000			
20003117	Axcan Pharma, Inc.	QLT Photo Therapeutics Inc.	QLT Photo Therapeutics Inc.
20003129	Warburg, Pincus Equity Partners, L.P.	QuadraMed Corporation	ChartOne, Inc.
20003151	Diehl Stiflung & Co.	Miller Company (The)	Miller Company (The)
20003152	CMGI Corporation	Alibris	Alibris
20003179	The Williams Companies, Inc.	Cantor Fitzgerald, L.P.	eSpeed, Inc.
20003180	AT&T Corp.	Telephone and Data Systems, Inc. Voting.	USCOC of Hawaii 3, Inc.
20003226	Landmark Communications, Inc.	United News & Media plc	National Titles, Inc. UAP Delaware, Inc. UAPnet United Parenting Publications, Inc.
20003229	American Tower Corporation	General Telecom, Inc.	General Telecom, Inc.
20003236	Dean Food Company	Pro-Fac Cooperative, Inc.	Agrilink Foods Inc.
20003252	Patterson Energy, Inc.	Roy T. Oliver, Jr.	High Valley Drilling, Inc.
20003257	General Motors Corporation	Universal Assurors, Inc.	Universal Warranty Corporation
20003262	Affiliated Computer Services, Inc.	The Intellisource Group, Inc.	The Intellisource Group, Inc.
20003267	Barnes & Noble, Inc.	Funco, Inc.	Funco, Inc.
20003270	Forstmann Little & Co. Equity Partnership-V, L.P.	Baptist Hospitals and Health Systems, Inc..	Medical Environments, Inc.
20003272	Jack Henry & Associates, Inc.	Symitar Systems, Inc.	Symitar Systems, Inc.
20003273	Cox Enterprises, Inc.	Peter Steinlauf	Edmunds Holding Company
20003277	Oryx Capital International, Ltd.	J. Herbert Ogden, Jr.	Mold-Ex, LLC
20003278	VIAG AG	Sapa AB	Eurofoil Belgium S.A., Eurofoil Luxembourg S.A. Vetuna AB
20003279	The SKM Equity Fund II, L.P.	Michael A. and Nancy J. Friend	UPT Plastics, Inc., and Owens Packaging, Inc.
20003280	Sonepar, S.A.	David Rosenstein	Brook Electrical Supply Co.
20003281	Banco Santander Central Hispano, S.A.	Patagon.com International, Inc.	Patagon.com International, Inc.
20003286	Summit Ventures V, L.P.	Antonio Salerno	Conxion Corporation
20003287	ReliaStar Financial Corp.	Lexington Global Asset Managers, Inc.	Lexington Global Asset Managers, Inc.
20003290	Cerner Corporation	Citation Computer Systems, Inc.	Citation Computer Systems, Inc.
20003304	Omnicom Group Inc.	Jason Moskowitz	U.S. Marketing Promotions Agency, Inc.
20003305	Omnicom Group Inc.	Michael Napoliello	U.S. Marketing Promotions Agency, Inc.
20003330	Enron Corp.	Enron Corp.	Enron Energy Services, LLC
TRANSACTIONS GRANTED EARLY TERMINATION—06/01/2000			
20003174	TBC Corporation, a Delaware corporation.	TKI Holdings, Inc., a Delaware corporation.	TKI Holdings, Inc., a Delaware corporation
20003294	SCOR U.S. Corporation	Partner Re Ltd.	Partner Re Life Insurance Company
20003296	Applied Digital Solutions, Inc.	Destron Fearing Corporation	Destron Fearing Corporation
20003297	The Titan Corporation	Fredrick S. Yeatts	Sencom Corp.
20003298	Pearson plc	The Family Education Network, Inc.	The FamilyEducation Network, Inc.
20003313	Stichting Pensioenfonds voor de Gezondheid Geestelijke.	Equity Office Properties Trust	Equity Office Properties Trust
TRANSACTIONS GRANTED EARLY TERMINATION—06/02/2000			
20003176	O. Gene Bicknell	Tricon Global Restaurants, Inc.	Tricon Global Restaurants, Inc.
20003363	Oger Pensat Holdings, Ltd.	Telscape International, Inc.	Telscape International, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17225 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—06/05/2000			
20003114	News Corporation Limited (The)	OmniSky Corporation	OmniSky Corporation
20003121	Miami Computer Supply Corporation	Thomas S. Roberts	Midwest Visual Equipment Co., Inc.
20003140	Ted H. McCourtney	Michael Karp	ATX Telecommunications Services, Inc.
20003141	George S. Blumenthal	Michael Karp	ATX Telecommunications Services, Inc.
20003142	J. Barclay Knapp	Michael Karp	ATX Telecommunications Services, Inc.
20003143	Oryx Capital International, Ltd.	Edward C. Lynch and Virginealee Lynch	Pacific Foods, Inc.
20003167	Takata Corporation	Petri Aktiengesellschaft	Petri Aktiengesellschaft
20003190	Horizon Telcom, Inc.	Bright Personal Communications Services, LLC.	Bright Personal Communications Services, LLC
20003249	JD Heiskell & Co.	Tate & Lyle PLC	PM Ag Products Incorporated
20003260	John E. McGrath	Tricon Global Restaurants, Inc.	KFC National Management Company
20003308	Del Mintz	Michael Karp	ATX Telecommunications Services, Inc.
20003310	General Electric Company	Milton M. Smith	TPI Aviation Holdings, Inc.
20003335	Omnicom Group Inc.	MB Techologies Limited	Live Technology Holdings, Inc.
20003336	Omnicom Group Inc.	Wayne Reuvers	Live Technology Holdings, Inc.
20003358	Wayne Jones	Theodore C. Hohman	Progressive Industries, Inc.
20003359	Wayne Jones	James J. Zawacki	Progressive Industries, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/06/2000			
20003276	Sumner M. Redstone	Peter J. Callahan	Palm Beach Radio Broadcasting, Inc.
20003299	President and Fellows of Harvard College.	Merchant's, Inc.	Merchant's, Inc.
20003307	Clarent Corporation	ACT Networks, Inc.	ACT Networks, Inc.
20003309	General Electric Company	H. Porter Burns	TPI Aviation Holdings, Inc.
20003315	Jon Munger	CKE Restaruants, Inc.	Hardee's Food Systems, Inc.
20003316	The Garfield Weston Charitable Foundation.	Lonza Group Limited	Lonnza, Inc.
20003320	Clayton, Dubilier & Rice Fund VI Limited Partnership.	Craig O. McCaw	ICO-Teledesic Global Limited
20003331	Berkshire Hathaway Inc.	U.S. Investment Corporation	U.S. Investment Corporation
20003334	BP Amoco p.l.c.	Motiva Enterprises LLC	First Coast Energy, L.L.P.
20003337	Photobition Group plc	Mark Shriro	Shriro Universal Washington Inc.
20003338	B III Capital Partners, L.P.	Samuels Jewelers, Inc.	Samuels Jewelers, Inc.
20003347	Harsco Corporation	John Mowlem & Company PLC	SGB Group plc
20003351	Warburg, Pincus Equity Partners, L.P.	Transkaryotic Therapies, Inc.	Transkaryotic Therapies, Inc.
20003355	Network Commerce Inc.	Joseph A. Liemandt	IveBeenGood.com, Inc.
20003367	Cardinal Health, Inc.	Rexam PLC	Rexam Cartons Inc.
20003373	Stephens Group, Inc.	StaffMark, Inc.	StaffMark, Inc.
20003377	Vestar Capital Partners IV, L.P.	GS Capital Partners II, L.P.	MCG Credit Corporation
20003378	Quantum Industrial Holdings Ltd.	GS Capital Partners II, L.P.	MCG Credit Corporation
20003381	SLM Holding Corporation	Thomas L. Conland Education Foundation.	Student Loan Funding Resources, Inc.
20003389	Gateway, Inc.	iXL Enterprises, Inc.	Consumer Financial Network
20003395	Ford Motor Company	Bayerische Motoren Werke Aktiengesellschaft AG.	Land Rover Group USA, Inc.; Land Rover Group Limited
20003397	Compagnie Luxembourgeoise pour L'Audiovisuel et la Finance.	Pearson plc	Pearson Television Holdings, Inc. Pearson Television North America, Inc.
20003410	GTCR Fund VII, L.P.	Coinmach Laundry Corporation	Coinmach Laundry Corporation
20003412	Reuters Group PLC	Pedestal Inc.	Pedestal Inc.
20003413	The LCM Irrevocable Trust	Thomas L. Gegax	Team Tires Plus, Ltd.

Trans No.	Acquiring	Acquired	Entities
20003414	Grupo IMSA, S.A. de C.V.	The Broken Hill Proprietary Co., Ltd. (an Australian corp.).	BHP Coated Steel corporation BHP Steel Building Products USA Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/07/2000			
20003113	Stephan Adams	Robert H. Willard	Horizon Outdoor Advertising, Inc.
20003393	MBNA Corporation	Old National Bancorp	Old National Bank
TRANSACTIONS GRANTED EARLY TERMINATION—06/08/2000			
20003326	BP Amoco p.l.c.	GreenMountain.com Company	GreenMountain.com Company
20003327	Enron Corp.	MG plc	MG plc
20003350	OptiCare Eye Health Systems, Inc.	Vision Twenty-One, Inc.	Vision Twenty-One, Inc.
20003368	David H. Murdock	Castle & Cooke, Inc.	Castle & Cooke, Inc.
20003370	Lynda L. Cameron	David A. New, Sr.	American Public Holdings, Inc.
20003375	Radio One, Inc	Sumner M. Redstone	Infinity Broadcasting Corporation of Dallas
20003376	Dan River Inc.	Westdeutsche Landesbank Girozentrale	WesTek Inc.
20003380	The BOC Group plc	Joray Corporation	Joray Corporation
20003419	BBA Group PLC	Volco Filtration Holding, Inc.	Snow Filtration Company, LLC
TRANSACTIONS GRANTED EARLY TERMINATION—06/09/2000			
20002914	Dexia S.A.	White Mountains Insurance Group, Ltd.	White Mountain Holdings, Inc.
20003224	Cox Enterprises, Inc.	United News&Media plc	National Titles, Inc. UAP Delaware, Inc., UAPnet United Parenting Publications, Inc.
20003233	Victor T. DiVello	Allied Waste Industries, Inc.	Allied Waste Industries, Inc.
20003325	Sumner M. Redstone	Bernard Waterman	Waterman Broadcasting Corporation of Texas
20003332	Fariborz Maseeh	Corning Incorporated	Corning Incorporated
20003333	Corning Incorporated	Fariborz Maseeh	IntelliSense Corporation
20003371	William M. Cameron	David A. New, Sr.	American Public Holdings, Inc.
20003394	CRH plc	Ashland Inc.	APAC, Inc. APAC-Alabama, Inc. APAC-Arkansas, Inc.
20003396	W.R. Grace & Co.	E.I. du Pont de Nemours & Company	E.I. du Pont de Nemours & Company
20003408	Charter Oak Partners	Bank of America Corporation	Plastic Engineered Components, Inc.
20003409	Naspers Limited	Spyglass, Inc.	Spyglass, Inc.
20003418	Vignette Corporation	OnDisplay, Inc.	OnDisplay, Inc.
003449	SCM Microsystems, Inc.	Mr. Kazuo Kanayama	Microtech International, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION–06/12/2000			
20003248	Raul Alarcon, Jr.	The Marcos and Sonya Rodriguez Family Trust.	Rodriguez Communications, Inc.
20003324	Code Hennessy & Simmons, LLC	Abington Settlement	Precise Holding Corporation
20003387	Koninklijke Philips Electronics N.V.	International Business Machines Corporation.	International Business Machines Corporation
20003399	The Chase Manhattan Corporation	Beacon Group, LLC	Beacon Group, LLC
20003423	Dura Pharmaceuticals, Inc.	Spiros Development Corporation II, Inc.	Spiros Development Corporation II, Inc.
20003424	Enesco Group, Inc.	Jonathan D. Butcher	Precious Moments by Samuel J. Butcher, Inc. Precious Moments Company Precious Moments, Incorporated
20003427	Centennial Communications Corp.	Marshall W. Pagon	MCT Cablevision, Limited Partnership Pegasus Cable Television of San German, Inc.
20003431	E. Stanley Kroenke	AT&T Corp. Pegasus Media & Communications, Inc.	Colorado Avalanche, LLC The Denver Nuggets Limited Partnership
20003432	GN Great Nordic AS	JABRA Corporation	JABRA Corporation
20003437	America Online, Inc.	Yodlee.com, Inc.	Yodlee.com, Inc.
20003439	First National of Nebraska, Inc.	InfiCorp Holdings, Inc.	InfiCorp Holdings, Inc.
20003441	Haftpflichtverband Der Deutchen Industrie V.a.G..	Acceptance Insurance Companies Inc.	Redland Insurance Company
20003442	GlobeSpan, Inc.	iCompression, Inc.	iCompression, Inc.
20003444	Deutsche Bank AG	Resun Leasing, Inc.	Resun Leasing, Inc.
20003446	The Peninsular and Oriental Steam Navigation Company.	Farrell Lines Incorporated	Farrell Lines Incorporated
20003447	Royal Nedlloyd N.V.	Farrell Lines Incorporated	Farrell Lines Incorporated
20003448	CSR Limited	Grupo Mexico, S.A. de C.V.	American Limestone Company, Inc.
20003451	InterNAP Network Services Corporation	CO Space, Inc.	CO Space, Inc.
20003454	The Interpublic Group of Companies, Inc..	Gordon Gund	Nationwide Advertising Services, LLC

Trans No.	Acquiring	Acquired	Entities
20003455	Societe Cooperative Agricole LImagrain	KWS SAAT AG	Great Lakes Hybrids, Inc.
20003467	HealthCare Ventures V, L.P.	OraSure Technologies, Inc.	OraSure Technologies, Inc.
20003476	Providence Equity Partners III, LP	SoftAware, Inc.	SoftAware, Inc.
20003484	Royal Carribean Cruises Ltd.	Newco	Newco
20003485	First Choice Holidays PLC	Newco	Newco
TRANSACTIONS GRANTED EARLY TERMINATION—06/13/2000			
20003422	Edwards Lifesciences Corporation	Valentine Acquisition Corp.	Valentine Acquisition Corp.
20003458	SBC Communications Inc.	E.N.M.R. Telephone Cooperative	Plateau Telecommunications, Incorporated
20003488	QLogic Corporation	Ancor Communications, Incorporated	Ancor Communications, Incorporated
20003489	Franciscan Missionaries of Our Lady Health System, Inc.	LifePoint Hospitals, Inc.	Riverview Medical Center, LLC
20003490	The Hub Group Limited	Cornelius J. McCarthy	C.J. McCarthy Business Trust
20003491	Exchange Application, Inc.	Customer Analytics Holdings, Inc.	Customer Analytics Holdings, Inc.
20003492	Oak Hill Capital Partners, L.P.	Align Technology, Inc.	Align Technology, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/14/2000			
20003385	John Rutledge Partners II, L.P.	Summit Technology, Inc.	Lens Express, Inc.
20003411	Republic Services, Inc.	Larry J. Schuchman	The recycling Group, Inc., LAJCG, Inc.
20003430	Nippon Telegraph and Telephone Corporation.	Verio, Inc	Verio, Inc.
20003469	Safeguard Scientifics, Inc	OPUS360 Corporation	OPUS360 Corporation
20003471	The Walt Disney Company	Marcos A. Rodriquez	Hibernia Communications, LLC
20003493	Highland 2000, L.P	Adelphia Communication Corporation	Adelphia Communication Corporation
20003495	Rodney L. Hale	Finance Enterprises, Ltd	Grand Pacific Life Insurance, Ltd.
20003498	Koninklijke Phillips Electronics N.V	MedQuist Inc	MedQuist Inc.
20003499	Marconi plc	Miguel G. Winder	Systems Management Specialists, Inc.
20003503	Ledcor Inc	Praha Trust	Meet Me Room, LLC TRES Management, LLC
20003510	Associated Food Stores, Inc	Sibbley Company, Ltd	Dan's Foods, Inc.
20003524	GMP Companies, Inc	Motorola, Inc	Motorola, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/15/2000			
20003237	Carl J. Martignetti	Burton J. Miller and Nesha R. Miller (husband and wife).	Classic Wine Imports, Inc.
20003238	Carmine A. Martignetti	Burton J. Miller and Nesha R. Miller (husband and wife).	Classic Wine Imports, Inc.
20003239	Carl J. Martignetti	Robert W. Hoffman	Classic Wine Imports, Inc.
20003240	Carmine A. Martignetti	Robert Hoffman	Classic Wine Imports, Inc.
20003271	CRH plc	Manitou Construction Company, Inc.	Manitou Construction Company, Inc.
20003415	King Pharaceuticals, Inc	American Home Products Corporation	American Home Products Corporation
20003416	American Home Products Corporation	King Pharmaceuticals, Inc	King Pharmaceuticals, Inc.
20003504	Carlyle Partners III, L.P	Align Technology, Inc	Align Technology, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/16/2000			
20001874	Franklin P. Perdue	Cargill, Incorporated	Cargill, Incorporated
20003440	The Interpublic Group of Companies, Inc.	Capita Technologies, Inc	Capita Technologies, Inc.
20003512	Novartis Pharma AG	Vertex Pharmaceuticals Incorporated	Vertex Pharmaceuticals Incorporated
20003513	Jerry C. Moyes	Simon Transportation Services Inc	Simon Transportation Services Inc.
20003523	Linc.net, Inc	Felix Petrillo	Felix Communications Corp., Felix General Contracting Inc., Felix Equities of Fla., Inc. Felix Equities, Inc., Felix Industries, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17226 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992 3282]

BUY.COM Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Michael Dershowitz, FTC/S–4002, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3153 or 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat., 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 29, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principle office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from BUY.COM Inc. (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent advertises, sells, and distributes books, music and video recordings, personal electronic devices, computer software, personal computers and other products through its Internet Website, www.buy.com. This matter concerns allegedly false and deceptive advertising claims regarding the sale of a $269 Compaq Presario 5304 computer system based upon a $400 rebate that required consumers to enter into a three year contract for Internet service.

The Commission's proposed complaint alleges that respondent falsely claimed that the total cost of a Compaq Presario 5304 computer system was $269. In fact, in order to obtain the computer system for $269, consumers were required to subscribe to CompuServe 2000 Internet service for three years at an additional cost of $21.95 per month or a full payment of $790.20. The Complaint also alleges that in representing that the total cost of the computer system was $269, respondent failed to disclose or failed to disclose adequately: (a) That consumers were required to subscribe to CompuServe 2000 Internet service for three years at an additional cost of $21.95 per month or a total cost of $790.20; (b) the amounts of the rebates, $200 and $400, and the total price of the computer system before rebates, $869; (c) that consumers who cancel the Internet service within three years must repay all or a portion of the $400 rebate and pay a $50 cancellation fee; and (d) that CompuServe does not provide local access telephone numbers for its Internet service in all areas, and therefore, that many consumers must either pay long distance telephone charges or surcharges of $6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or internet access service.

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased. Furthermore, if the advertised product or service is sold together with a service, respondent is also required to disclose the length of time that consumers are required to purchase that service. Part II also contains a proviso that permits respondent to use the terms ''rebate'' or ''discount'' without making the additional cost disclosures, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close proximity to the after-rebate price or cost representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts (*i.e.*, the before-rebate price). Part III also contains a proviso that states that if there is only one rebate involved in the offer, and no other reductions in the total price of the product or service, respondent need only disclose the amount of that one rebate, and need not also disclose the before-rebate price.

Part IV of the proposed order prohibits the respondent from making any representation about the price or cost of any Internet access service it offers for sale, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not

they would have to incur such costs and the amounts of any such costs. These disclosures must be clear and conspicuous.

Part IV of the proposed order also contains a proviso, that together with the definition of ''through the use of a hyperlink,'' provides a way in which the disclosures required by Part IV can be made on the Internet with hyperlinks. These disclosures may be made through the use of hyperlinks, as long as each hyperlink label contains sufficient information about the nature and importance of the required disclosure, is, itself, clear and conspicuous, is on the same Web page and proximate to the Internet service price or cost representation, and leads directly to the full disclosure. According to the proviso, if a hyperlink is used to disclose information about Internet cancellation terms, it must be labeled as follows: ''Early Cancellation of the Internet Service Will Result in Substantial Penalties. Click Here.'' Similarly, if a hyperlink is used to disclose information about Internet access costs, it must be labeled: ''You May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here.''

Part V of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in complying with the proposed order.

Part VI of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part VII of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VIII of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part IX of the proposed order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17222 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992 3313]

Office Depot, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Michael Dershowitz, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3153 or 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 29, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Office Depot, Inc. (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent advertises, sells, and distributes office products, including personal computers. This matter concerns allegedly false and deceptive advertising claims regarding the sale of a $1,049.97 Compaq Presario 5716 computer system based upon a $400 rebate that required consumers to enter into a three year contract for Internet service and the sale of a ''free'' *e*machines computer based upon a similar $400 rebate.

The Commission's proposed complaint alleges that respondent falsely claimed that the total cost of a Compaq Presario 5716 computer system was $1,049.97. In fact, in order to obtain the system for $1,049.97, consumers were required to subscribe to CompuServe Internet Service for three years at an additional cost of $21.95 per month or a full payment of $790.20. The complaint also alleges that in representing that the total cost of the computer system was $1,049.97, respondent failed to disclose or failed to disclose adequately that: (a) Consumers were required to subscribe to CompuServe Internet service for three years at an additional cost of $21.95 per month or a full payment of $790.20; (b) consumers who cancel the Internet service within three years must repay the entire $400 rebate and pay a $50 cancellation fee; and (c) CompuServe does not provide local access telephone numbers for its Internet service in all areas, and therefore, that many

consumers must either pay long distance telephone charges or surcharges of $6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

In addition, the complaint alleges that respondent falsely claimed that a ''free'' *e*machines computer included a monitor at no additional cost. In fact, the monitor cost $139.99 or $199.99, depending on its size. The complaint also alleges that respondent falsely claimed that consumers could obtain the ''free'' *e*machines computer at no cost after rebates. In fact, in order to obtain the computer at no cost, consumers were required to subscribe to Prodigy Internet Service for three years at an additional cost of $19.95 per month or a full payment of $718.20. The complaint also alleges that in representing that consumers could obtain the ''free'' *e*machines computer at no cost after rebates respondent failed to disclose or failed to disclose adequately that: (a) Consumers were required to subscribe to Prodigy Internet service for three years at an additional cost of $19.95 per month or a total cost of $718.20; (b) consumers who cancel the Internet service within three years must repay the entire $400 rebate and pay a $50 cancellation fee; and (c) Prodigy does not provide local access telephone numbers for its Internet service in all areas, and therefore, that many consumers must either pay long distance telephone charges or surcharges of $6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or Internet access service.

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased. Furthermore, if the advertised product or service is sold together with a service, respondent is also required to disclose the length of time that consumers are required to purchase that service. Part II also contains a proviso that permits respondent to use the terms ''rebate'' or ''discount'' without making the additional cost disclosers, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making any representation about the price or cost of any Internet access service it offers for sale, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not they would have to incur such costs and the amounts of any such costs. These disclosures must be clear and conspicuous.

Part IV of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in disseminating the representations.

Part V of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part VI of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VII of the proposed order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by the either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17223 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File Nos. 002–3199; 002–3200; 002–3201; 002–3202; 002–3203; 002–3204; and 002–3205]

Swisher International, Inc.; Consolidated Cigar Corporation; Swedish Match North America, Inc.; General Cigar Holdings, Inc.; Lane Limited; Havatampa, Inc.; and John Middleton, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in these seven matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before July 26, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler or Mamie Kresses, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–3090 or 326–2070.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreements package can be obtained from the FTC Home Page (for June 26, 2000), on the World Wide Web, at ''http://

www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements containing consent orders from the following cigar manufacturers, importers or marketers: Swisher International, Inc. (Matter No. 002–3199); Consolidated Cigar Corporation (Matter No. 002–3200); Havatampa, Inc. (Matter No. 002–3204); General Cigar Holdings, Inc. (Matter No. 002–3202); John Middleton, Inc. (Matter No. 002–3205); Lane Limited (Matter No. 002–3203); and Swedish Match North America, Inc. (Matter No. 002–3201).

The proposed consent orders have been placed on the public record for thirty (30) days for the receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and comments received and will decide whether it should withdraw from the agreements and take appropriate action or make final the agreements' proposed orders.

Background

In July 1999, the Federal Trade Commission provided a Report to Congress, entitled *Cigar Sales and Advertising and Promotional Expenditures for Calendar Years 1996 and 1997* (''Commission Report''). The Commission Report recommended that, given the significant increase in cigar smoking prevalence in recent years and the serious health risks posed by cigar smoking,[1] cigars should be regulated in a manner consistent with the current regulation of cigarettes and smokeless tobacco. See *Federal Cigarette Labeling and Advertising Act,* 15 U.S.C. 1331 *et seq.; Comprehensive Smokeless Tobacco Health Education Act of 1986,* 15 U.S.C. 4401 *et seq.* The Commission Report recommended that Congress either enact legislation to require federal health warnings on cigar labeling and advertising or direct the Commission to use its existing authority, under Section 5 of the Federal Trade Commission Act, to require cigar health warnings.

In November 1999, in the Joint Explanatory Note of the Conferees to H.R. 3421 Appropriations Bill, the Congressional Appropriations Committees responded to the Commission Report by directing the FTC to report back to the Committees on Commission plans to establish ''uniform Federal health warning label[s].'' [2]

After consideration of the National Cancer Institute's findings in its Cigar Monograph on the serious health risks of regular cigar use, and the failure of cigar advertising and labeling to disclose these health risks, the Commission negotiated consent agreements with the seven largest cigar companies to implement health warnings on cigar labeling and advertising nationwide.[3]

The Proposed Complaints and Orders

The proposed complaints each allege that the failure to disclose that regular cigar smoking can cause serious adverse health effects is both unfair and deceptive in violation of Section 5 of the FTC Act. Part I of the proposed orders requires the respondents to make a clear and conspicuous disclosure of the following warning statements on cigar labels and in advertising:

SURGEON GENERAL WARNING: Cigar Smoking Can Cause Cancers Of The Mouth And Throat, Even If You Do Not Inhale.

SURGEON GENERAL WARNING: Cigar Smoking Can Cause Lung Cancer And Heart Disease.

SURGEON GENERAL WARNING: Cigars Are Not A Safe Alternative To Cigarettes.

SURGEON GENERAL WARNING: Tobacco Use Increases The Risk Of Infertility, Stillbirth, And Low Birth Weight.

SURGEON GENERAL WARNING: Tobacco Smoke Increases The Risk Of Lung Cancer And Heart Disease, Even In Nonsmokers.

Part II of the proposed orders sets out specific format requirements for the warnings, which are designed to ensure that the warnings are visible and readable. Part II also requires that the warning statements on labeling and advertising be printed in black print on a solid white background, and be capitalized and punctuated as set forth in Part I.

Part III specifies the location and size requirements for the disclosure of the health warnings on cigar labels. The orders require that the warning be displayed on the principal display panel of the package. For the majority of cigar boxes, the orders define the principal display panel to be the larger of the top or front panel of the package, thus ensuring that the warning is in the most noticeable location. The orders make an exception for boxes of premium (hand-rolled) cigars, providing that the warning can appear on the top or front of the box, depending upon which panel is more likely to be seen by consumers.

Part IV sets forth the specific format and size requirements for the disclosure of the health warnings on cigar advertising. The orders provide that the warning shall be in black print on a white background and be centered in a black ruled rectangular box. Part IV specifies how to calculate the size of the warning and where to place the warning in various types of advertising, including periodicals, merchandisers, functional items, catalogues and cigar packages that also function as point-of-sale displays.

Part V specifies how to make the required disclosures in audio and video advertisements, including radio, television, the Internet, tapes and films. The orders require that in interactive media, such as the Internet, the warnings must be displayed in an unavoidable manner on every Web page.

Part VI of the proposed orders addresses requirements for the disclosure of the warnings on utilitarian items. Utilitarian items are treated like other advertising, and the warning statements must appear in a rectangular box form, in a size based upon the item's total advertising display area.

Part VII provides that cooperative advertisements paid for in whole or in part by a respondent must include the warnings, with the exception of very small print advertisements containing only brand name and price information.

Part VIII sets forth the specific requirements for the rotation, display and distribution of the warning statements on cigar packages. For each

[1] See U.S. Department of Health and Human Services, National Cancer Institute, *Smoking and Tobacco Control Monograph No. 9 Cigars: Health Effects and Trends* (1998), NIH publication no. 98–4302 (''Cigar Monograph'').

[2] 145 Cong. Rec. H12230–02 (daily ed. Nov. 17, 1999).

[3] Like all FTC consent orders, these orders are for settlement purposes only and do not constitute an admission by the cigar manufacturers of any law violation.

cigar brand, respondents must display each of the five required warning statements randomly in as equal a number of times as possible, and must distribute the packages randomly in all parts of the U.S.A. in which they are marketed.

Part IX provides that, on most types of advertising, the five warning statements shall be rotated in an alternating sequence every three months. Part IX provides for equal simultaneous display of the warning statements on merchandisers, cigar boxes that can function as open package displays and utilitarian items. Parts VIII and IX of the proposed orders also require the companies to submit to the Commission for approval plans for the display of the warnings on cigar packages and advertisements, and to comply with the plans as approved.

Part X of the proposed orders states that the Commission will consider state or local requirements for different health warnings on any cigar labeling or advertising that is required to display the FTC warning to be in conflict with the orders.

Part XI provides a safe harbor in the event the companies have taken reasonable steps to assure compliance; in the event of labels or advertisements that do not comply with the order, the proposed respondents will bear the burden of establishing that reasonable steps were taken to comply with the order. This same safe harbor provision is included in the Commission's smokeless tobacco regulations.

Part XII of the proposed orders states that the warning requirements shall become effective one hundred and eighty (180) days after issuance of the order.

Part XIII provides that in the event the Federal Cigarette Labeling and Advertising Act or the Comprehensive Smokeless Tobacco Health Education Act or the Commission's Smokeless Tobacco Regulations are amended or modified to change the size or format of the warnings for cigarettes or smokeless tobacco, the cigar orders may be reopened to determine whether the size or format of the warnings for cigars should be modified to conform to such changes.

Parts XIV through XVI of the proposed orders contain standard recordkeeping, reporting and compliance requirements.

The proposed orders do not contain a sunset provision due to the importance of the health warnings required therein.

Objectives of the Proposed Orders

The Commission's intent in obtaining the proposed consent orders is to provide a uniform national system of health warnings on cigar labeling and advertising. National health warnings that are clear and conspicuous benefit consumers. Here, the cigar warnings will prevent future deception and unfairness by providing important information with which consumers nationwide can make more informed choices.[4]

Each of the five warnings conveys a simple and specific message about health risks associated with cigar use. the orders' requirements for display of the warnings on packaging and advertising will provide sufficient repetition of each warning statement to contribute to long-term recall of each message, while decreasing the likelihood that any one message will become so familiar and overexposed that its effectiveness will ''wear out.'' Together, the five warnings provide a comprehensive warning scheme that provides necessary and important information to consumers nationwide.

Because the proposed respondents' cigar packaging and advertising is disseminated in the national marketplace, a comprehensive national system of simple and direct warnings will provide the greatest benefits to consumers. Moreover, multiple, and potentially inconsistent, warnings on individual packages or advertisements could neutralize or negate those benefits. Such multiple warnings may be confusing to consumers and undercut the saliency of the warnings required by these consent orders. Further, they are likely to have the unintended effect of making it more difficult for consumers to process the warning messages required here. And, while diminished effectiveness could result when one state mandates additional warnings on packages or advertisements bearing the Commission warnings, the problem will be exacerbated if more than one state imposes requirements applicable to a single package or advertisement.

In light of the important benefits from a national warning system, Part X of the Commission's orders preempts state or local requirements for different health warnings on any cigar labeling or advertising that is required to display the FTC warnings. At the same time, the Commission recognizes the critically important role that states play in consumer protection and tobacco control. The provision does not affect other state or local requirements. For example, required warnings for types of advertising that are not covered by the proposed orders (such as shelf talkers under a certain size), or state or local restrictions on advertising placement or youth access to tobacco products are not affected. It is the Commission's intent that this provision apply only to state requirements for different health warnings by companies who have entered into the FTC consent orders, and only to packages and advertising required to contain the federally-mandated warnings.

The purpose of the analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way the terms therein.

By direction of the Commission.

Donald S. Clark,

Secretary.

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BILLING CODE 6750–01–M

[4] Uniform national health warnings likewise benefit national competition. Multiple different warnings can raise costs and regulatory burdens for national marketers such as the proposed respondents.

FEDERAL TRADE COMMISSION

[File No. 992 3206]

Value America, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Michael Dershowitz, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, D.C. 20580 (202) 326–3153 or 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 29, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/format.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Value America, Inc. (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent advertises, sells, and distributes personal electronic devices, computer software, personal computers, and other products through its Internet Web site (reached by <www.va.com> or <www.valueamerica.com>), and through toll-free telephone numbers. This matter concerns allegedly false and deceptive advertising claims regarding the sale of various computer systems based upon a $400 rebate that required consumers to enter into a three year contract for Internet service. This matter also concerns alleged violations of the Mail or Telephone Order Merchandise Rule.

The Commission's proposed complaint alleges that respondent falsely claimed that the total cost of a Toshiba Satellite 2100CDS laptop was $899; that the total cost of a Hewlett-Packard Pavilion 4535 Multimedia PC was $449; that the total cost of a Proteva computer system was $1299; that the total cost of an IBM Aptiva E572 Micro Tower computer was $619; and that an *e*machines etower 366C computer was ''free.'' In fact, in order to obtain these computers at the advertised prices, consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for three years at an additional cost of $19.95 to $21.95 per month or, in the case of CompuServe Internet Service, an optional full pre-payment of $790.20.

The complaint also alleges that when respondent represented that the total cost of the computer was, respectively, $899, $449, $1299, $619, or ''free,''respondent failed to disclose or failed to disclose adequatley: (a) That consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for three years at an additional cost of $19.95 to 21.95 per month, or in the case of CompuServe Internet Service, an optional full pre-payment of $790.20; (b) the amounts of the rebates, and the total price of the computer systems before rebates with respect to the Hewlett-Packard Pavilion 4535 Multimedia PC, and the *e*machines etower 366C computer; (c) that consumers who cancel the Internet service within three years must repay all or a portion of the $400 rebate and, in the case of the CompuServe and Prodigy rebates offers, also pay a cancellation fee of up to $50; (d) that, in the case of the Prodigy rebates, it can take a total of 12 to 17 weeks to receive the $400 rebate; and (e) that CompuServe, Prodigy, and Microsoft do not provide local access telephone numbers for their respective Internet services in all areas, and therefore, that many consumers must either pay long distance telephone charges or, in the case of CompuServe 2000 or Prodigy Internet, $6.00 per hour to access their Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

In addition, the complaint alleges that respondent falsely claimed that the IBM Aptiva E572 Micro Tower computer included a monitor at no additional cost. In fact, consumers must purchase a monitor separately. The complaint also alleges that in numerous instances, respondent failed to ship some or all of the ordered merchandise to the buyer within the time stated in the solicitation, or if no time was stated, within 30 days after receipt of a properly completed order, as required by the Mail Order Rule. The complaint also alleges that when respondent was not able to ship some or all of the ordered merchandise to the buyer, respondent failed to offer to the buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by the Mail Order Rule. The complaint also alleges that when respondent was not able to ship ordered merchandise to the buyer, and having failed to offer the affected buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by the rule, respondent failed to deem the order canceled and to make a prompt refund the buyer, as required by the Mail Order Rule.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or Internet access service or what is included in the price of any such product or service.

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased, along with the length of time consumers are required to purchase such other service. Part II also contains a proviso that permits respondent to use the terms ''rebate'' or ''discount'' without making the additional cost disclosures, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close proximity to the after-rebate price or cost

representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts (*i.e.*, the before-rebate-price). Part III also contains a proviso that states that if there is only one rebate involved in the order, and no other reductions in the total price of the product or service, respondent need only disclose the amount of that one rebate, and need not also disclose the before-rebate price.

In connection with the promotion or sale of any Internet access service, or any computer or computer-related product whose price is conditioned upon the purchase of Internet access service, Part IV of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any Internet access service, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not they would have to incur such costs and the amounts of any such costs. In addition, respondent must disclose the amount of time required for purchasers to receive any rebate. These disclosures must be clear and conspicuous.

Part IV of the proposed order also contains a proviso, that together with the definition of ''through the use of a hyperlink,'' provides a way in which the disclosures required by Part IV can be made on the Internet with hyperlinks. These disclosures may be made through the use of hyperlinks, as long as each hyperlink label contains sufficient information about the nature and importance of the required disclosure, is itself clear and conspicuous, is on the same Web page and proximate to the Internet service price or cost representation, and leads directly to the full disclosure. According to the proviso, if a hyperlink is used to disclosre information about Internet cancellation terms, it must be labeled as follows: ''Early Cancellation of the Internet Service May Result in Substantial Penalties. Click Here.'' Similarly, if a hyperlink is used to disclose information about Internet access costs, it must be labeled: ''You May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here.'' Finally, if a hyperlink is used to disclose information about the time it takes to receive a rebate, it must be labeled: ''Time to Receive Rebate. Click Here.''

Part V of the proposed order prohibits respondent from violating any provision of the Mail or Telephone Order Merchandise Rule, including the soliciting of orders for merchandise, either by mail or phone, without a reasonable basis to expect to be able to ship some or all of the merchandise within the time stated in the solicitation, or if no time is stated, within 30 days of receiving a properly completed order. Respondent must offer the buyer the option of either consenting to a delay in shipping or canceling the order and receiving a prompt refund when respondent is unable to ship within the applicable time period. Respondent must also deem the order canceled and make a prompt refund in instances where respondent failed to ship on time and failed to offer the buyer the option of either consenting to the delay or canceling the order and receiving a prompt refund.

Part VI of the proposed order requires respondent to maintain and make available to the Commission for five years, business records demonstrating compliance with the terms and conditions of Part V. Part VII of the proposed order requires respondent to compile a list of purchasers who ordered products from respondent and paid for them prior to the service date of the order, and who had not previously received a refund or consented to a delay, but did not receive ordered products more than ten days after the date respondent stated they would be shipped, or the date of the delay notice. Respondent must then cancel each such order and send a refund to each purchaser on the list for the total amount paid, including all taxes and shipping and handling charges, if any. Respondent must furnish the list of purchasers to the Commission, indicating for each the amount and date the refund was paid.

Part VIII of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in complying with the proposed order.

Part IX of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part X of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part XI of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part XII of the proposed order is a ''sunset'' provision, dictating that the order will terminate twenty years after the date it is issued or twenty years after a compliant is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17224 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–00–4]

Fiscal Year 2000 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to develop new Family Friends/Volunteer Senior Aides (VSA) projects and, in addition, to provide training and technical assistance to Family Friends/VSA projects.

SUMMARY: The Administration on Aging announces that it will hold a grant award competition, under this announced priority area, for seven (7) to eight (8) new model projects that demonstrate effective ways of planning, developing, and sustaining Family Friends/VSA programs for one (1) project to provide appropriate training and technical assistance to the Family Friends/VSA projects.

The deadline date for the submission of applications is August 14, 2000. For the model project competition, eligible applicants are restricted to public or nonprofit community-level agencies or organizations. In addition, because the primary focus of this priority area is on the establishment of new model Family Friends/VSA projects in communities other than those which have already

been program sites, those agencies or organizations that have carried out Family Friends/VSA projects are not eligible for this competition. No applicant eligibility restrictions, other than public or nonprofit status, apply to the training/technical assistance competition.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., Room 4261, Washington, DC 20201, or by calling 202–619–2050.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 00–17175 Filed 7–6–00; 8:45 am]

BILLING CODE 4154–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–49–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

Evaluative Research for the National Bone Health Education Campaign—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC), in cooperation with the Office on Women's Health, is developing a national osteoporosis prevention campaign targeting girls ages 9–18—the National Bone Health Campaign (NBHC). The 5-year campaign will begin by targeting girls ages 9–12 and their parents and then expand to girls 13–18 and their parents. Funding for the campaign has been approved for the first two years of the program, so the research presented here is only that to be conducted in the those two years.

The research will consist of: (1) Message tests with representative samples of 200 girls ages 9–12, 200 girls ages 13–18 and 200 parents of girls ages 9–12; (2) Baseline telephone surveys of representative samples of 1000 girls 9–12 and 1000 girls 13–18; (3) Follow-up survey of representative sample of 1000 girls ages 9–12; and (4) Annual surveys of 400 girls 9–12 and annual surveys of 200 parents of girls 9–12 in five ''sentinel'' sites.

Specifically, the purpose of the research is to (1) Pre-test campaign messages to ensure that they are attention-getting, understandable, personally relevant, and credible for the target audiences; (2) Provide ongoing assessment of campaign events and their effects in five ''sentinel'' sites; and (3) Provide an overall measure of the campaign's effectiveness over time.

The results of the proposed research will be used to identify and develop effective campaign messages and strategies to promote bone healthy attitudes, knowledge and behaviors among the primary and secondary audiences, and to assist program planners in assessing and refining program tactics. The research will also provide a measure of the success of the program in increasing awareness of bone healthy activities and improving knowledge and attitudes related to those activities among the primary target audience (girls 9–18). The research will also be shared with NBHEC partners (various public and private agencies or organizations) for use in designing and implementing collaborative programs and messages at the national and local levels.

The total annualized burden is estimated to be 2,000 hours.

	No. of respondents	Responses per respondent	Hours per response
National baseline survey of girls ages 9–18	1,000 (9–12)	1	20/60
	1,000 (13–18)	1	20/60
National follow-up survey of girls ages 9–12	1,000	1	20/60
3 sentinel site surveys of girls ages 9–12	2,000	1	20/60
3 sentinel site surveys of parents of girls ages 9–12	1,000	1	20/60

Dated: June 30, 2000.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17227 Filed 7–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–48–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

Evaluating National Dissemination Strategies for Effective HIV Prevention Programs for Youth—NEW—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC) seeks OMB approval for an evaluation of the dissemination of CDC identified effective education programs from national training to the community level to be conducted from 2000 to 2002. The project aims to enhance the adoption and implementation of effective HIV prevention programs. As such, it is directly related to the CDC FY 2000 performance plan to reduce the incidence of HIV/AIDS through the dissemination of HIV prevention education programs. CDC will study the diffusion of two prevention programs. Half of the participants attending the training will be randomly selected, by state, to receive additional technical assistance and diffusion action

planning. This evaluation will follow two cohorts of respondents: *Cohort A* (Master Trainers and Coalition Leaders) includes education and public health agency administrators, health education trainers, and community organization and community media leaders who attended the national training and who will disseminate the program in their states and communities; Cohort B (Local Health Educators and Coalition Members) includes local administrators, teachers, and health educators in local health departments, schools, media groups, and community organizations, who attended a training provided by a Master Trainer/Coalition Leader. Cohort A will complete a 30-minute survey at 6 months and 12 months post-training and also participate in one 90-minute focus group conducted by phone. Cohort B will receive one 45-minute survey six months after they have received training.

We assume that each Cohort A participant will, in turn, train 30 local health educators or coalition members (Cohort B). The total annualized burden is estimated to be 1339.5 hours.

Respondents	Number of respondents	Number of responses per respondent	Burden per response
Cohort A: HIV	57	2	0.50
Cohort B: HIV	1710	1	0.75

Dated: June 30, 2000.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17228 Filed 7–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00142]

Human Immunodeficiency Virus (HIV) Related Applied Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for human immunodeficiency virus (HIV) related applied research for the control and prevention of HIV. The purpose of this program is to encourage new and innovative methods to further the prevention of HIV infection. This program addresses the ''Healthy People 2010'' priority area of HIV Infection. For the conference copy of ''Healthy People 2010'' visit the internet site:<http://www.health.gov/healthypeople>.

Projects that will be considered for funding are applied research for the control and prevention of HIV that address only the following Program Priority Areas:

1. Prevent development of opportunistic infections and prevent or delay progression to AIDS and death among HIV-infected persons receiving medical care.

2. Develop, pilot, evaluate, and/or transfer technology of HIV rapid testing and counseling strategies.

3. Identify and characterize recently HIV-infected persons in specific populations or geographic areas; or assess HIV incidence in selected high-risk populations or social networks in geographically-defined communities where HIV incidence is known or expected to be high; or use of HIV incidence data to evaluate prevention interventions.

4. Develop and implement methods to improve access to care of HIV-infected person and to reduce HIV associated morbidity and mortality among persons in medical care.

5. Describe the prevalence and identify demographic and drug use correlates of antibody to HIV, HCV (Hepatitis C Virus), HBV (Hepatitis B Virus) and other bloodborne pathogens among entrants to a correctional facility (CF) and estimate the incidence of transmission of such bloodborne pathogens among recidivists reentering the correctional facility.

B. Eligible Applicants

Applications may be submitted by universities, colleges, research institutions, hospitals, public and private non-profit organizations, community-based, national, and regional organizations, State and local governments or their bona fide agents or instrumentalities, federally recognized Indian Tribal governments, Indian tribes or organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to fund approximately four new and/or competing continuation awards. It is expected that the average award will be $125,000, ranging from $100,000—$300,000. Funding estimates are subject to change. It is expected that awards will begin September 30, 2000, and will be made for a 12 month budget period within a project period of up to four years. Funding estimates are subject to change.

Continued support in future years will be based on the availability of funds and success in demonstrating progress toward achievement of objectives.

Funding Preference

Preference will be given to competing continuation applications to ensure continuity of support for currently funded projects.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities under 2. (CDC Activities). Recipient activities to achieve the purposes of this program will vary by project.

1. Recipient Activities

a. Complete the development of the research protocol.

b. Carry out the activities according to the approved protocol.

c. Ensure that appropriate approvals are secured for the protection of human subjects, Office of Management and Budget and Paperwork Reduction Act, privacy, confidentiality, and data security.

d. Compile and disseminate findings.

2. CDC Activities

a. Monitor and evaluate scientific and operational accomplishments of the project through periodic site visits, frequent telephone calls, and review of technical reports and interim data analysis.

b. Assist in facilitating the planning and implementation of the necessary linkages with local or State health departments and assist with the developmental strategies for applied clinical or prevention oriented research programs, for recipients whose projects involve collaboration with a State or local health department.

c. Facilitate the technological and methodological dissemination of successful prevention and intervention models among appropriate target groups, such as, State and local health departments, community based organizations, and other health professionals.

d. Provide technical assistance in planning and evaluating strategies and protocols, as requested.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative, excluding the budget, should be no more than 11 doubled-spaced pages, printed on one side, with one inch margins, and unreduced font.

The application narrative should consist of:

1. Abstract (Not to exceed 1 page): An executive summary of your program covered under this announcement.

2. Program Plan (Not to exceed 10 pages): In developing the application under this announcement, please review the recipient activities and, in particular, evaluation criteria and respond concisely and completely.

3. Budget: Submit an itemized budget and supporting justification that is consistent with your proposed program plan.

F. Submission and Deadlines

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: www.cdc.gov/ . . . Forms, or in the application kit. On or before August 18, 2000, submit your application to the Grants Management Specialist listed in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applications

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. The inclusion of a brief review of the scientific literature pertinent to the study being proposed and specific research questions or hypotheses that will guide the research. The originality and need for the proposed research, the extent to which it does not replicate past or present research efforts, and how findings will be used to guide prevention and control efforts. (25 points)

2. The quality of the plans to develop and implement the study, including the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits. (25 points)

3. Extent to which proposed activities, if well executed, support attaining project objectives. (25 points)

4. Extent to which personnel involved in this project are qualified, including evidence of past achievements appropriate to the project, and realistic and sufficient time commitments. Evidence of adequacy of facilities and other resources supported to carry out the project. (25 points)

5. Other (not scored)

(a) Budget: Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

(b) Human Subjects: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. an annual progress report;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1—Human Subjects Requirements
AR–2—Inclusion of Women and Racial and Ethnic Minorities in Research Requirements
AR–4—HIV/AIDS Confidentiality Provisions
AR–5—HIV Program Review Panel Requirements
AR–6—Patient Care Prohibitions
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 317(k)(2) [42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number 93.943, Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an

application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Julia L. Valentine, Grants Management Specialist Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone (770) 488–2732 or facsimile at (770) 488–2847 or INTERNET address: HTTP://WWW.jxv1@CDC.GOV.

You may obtain programmatic technical assistance from: Peggy Bloom, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Atlanta, GA 30333, Telephone (404) 639–0927, INTERNET address: HTTP:\\WWW.PMB1@CDC.GOV

Dated: June 30, 2000.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17178 Filed 7–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00137]

HIV/AIDS Prevention Program Development and Technical Assistance Collaboration for Faith Communities in Countries Targeted by the Leadership and Investment in Fighting the Epidemic (LIFE) Initiative; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for HIV/AIDS Prevention Program Development and Technical Assistance Collaboration with Countries Targeted by the LIFE (Leadership and Investment in Fighting an Epidemic) Initiative.

In July 1999, the Administration announced the LIFE initiative to address the global AIDS pandemic. The LIFE initiative, an effort to expand and intensify the global response to the growing AIDS pandemic and its serious impact, is part of the United States (U.S.) Government's participation in the International Partnership Against HIV/AIDS in Africa (IPAA). A central feature of the LIFE initiative is a $100 million increase in U.S. support for sub-Saharan African countries and India, which are working to prevent the further spread of HIV and to care for those affected by this devastating disease. This additional funding is a critical step by the U.S. Government in recognizing the impact that AIDS continues to have on individuals, families, communities, and nations and responding to the imperative to do more. The Department of Health and Human Services (HHS), through its agency the Centers for Disease Control and Prevention (CDC) is administering $35 million of the $100 million allocated to the LIFE initiative by Congress.

The purpose of this program is to support HIV/AIDS prevention program development and technical assistance for faith communities in countries designated by the U.S. Congress under the LIFE Initiative. At present, those countries are Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda, Rwanda, Zimbabwe, Ethiopia, Mozambique, Malawi, Tanzania, Nigeria, Senegal, Zambia and India. The countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active.

The goals of the program are to address and support three program elements of the LIFE initiative: (1) Primary Prevention, (2) Capacity and Infrastructure Development, and (3) Community and Home-Based Care and Treatment. This program calls for the delivery of HIV/AIDS prevention programs development, and technical assistance to the LIFE countries through a variety of recipient activities. The result will be enhancement of the skills of faith leaders from LIFE country national AIDS programs in strategic planning, implementation, evaluation, and communication relating to HIV/AIDS prevention, capacity building, and care programs.

B. Eligible Applicants

Assistance will be provided only to a U.S. national or regional minority organization (NRMO). Eligible applicants must meet these criteria:

1. Have been granted tax-exempt status under Section 501 (c)(3), evidenced by an Internal Revenue Service (IRS) determination letter.

2. Have a minimum of one year of documented experience in operating and centrally administering a coordinated program to integrate HIV prevention education and services into faith communities.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to support Phase I and Phase II of this award. It is expected that the award will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities. It is anticipated that in the first year of the project, the recipient will perform the activities listed below in Phase I in at least three of the LIFE countries listed in Section A ''Purpose''. The recipient may target more than, but not less than three LIFE countries.

1. Recipient Activities

Phase I

a. Provide technical assistance to faith community leaders in LIFE countries to explore the benefits, challenges, and rewards of embracing the HIV/AIDS epidemic as an issue within their respective communities.

b. Provide technical assistance to help these faith leaders in LIFE countries develop needs assessments to evaluate opportunities for and barriers to adopting HIV/AIDS prevention as an issue within their communities.

c. Provide technical assistance to help these faith leaders assess resources and linkages available to serve the needs identified in the needs assessments. Such resources and linkages may include materials, peer-to-peer training opportunities and/or technical assistance. These training and technical assistance opportunities may include placements that bring faith leaders from LIFE countries to U.S. churches identified to have model programs, as well as opportunities to bring faith

leaders from LIFE countries to the U.S. for conferences, meetings, partnership development, and/or developmental experiences identified as having relevance to faith-based HIV prevention and care issues.

d. Provide technical assistance to faith leaders from LIFE countries to develop strategic plans which outline priorities, projects, and supporting capital and human resources as identified in the faith leaders' community mobilization needs assessments. This activity should include facilitating the identification of any gaps in available resources and linkages, work requirements to adapt existing resources to be effective and relevant, and any new resources needed.

e. Collaborate with faith leaders in LIFE countries in the selection of strategic plan activities to be performed in Phase II of this cooperative agreement.

f. In collaboration with other partners of the IPAA, the recipient organization will develop a monitoring and evaluation plan to document, monitor, and record process and input/output indicators of successful activities under this cooperative agreement that are consistent with CDC plans for the global monitoring and evaluation framework supporting the LIFE Initiative, and include such evaluation information in the required annual progress reports.

Phase II

a. Provide technical assistance to facilitate and coordinate activities selected from the strategic plans.

b. In collaboration with other partners of the IPAA, the recipient organization will develop a monitoring and evaluation plan to document, monitor, and record process and input/output indicators of successful activities under this cooperative agreement that are consistent with CDC plans for the global monitoring and evaluation framework supporting the LIFE Initiative, and include such evaluation information in the required annual progress reports.

2. CDC Activities

a. Provide technical assistance and expertise toward development of faith leaders' needs assessments and strategic plans.

b. Assess progress of recipient activities during Phase I and II of the program, and provide technical assistance where appropriate.

c. Provide technical assistance in determining recipient activities for Phase II of this cooperative agreement.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font. Pages should be numbered and a complete index to the application and its appendixes must be included. Begin each separate section on a new page. The original and each copy of the application set must be submitted unstapled and unbound. The following format should be used when developing your narrative.

Format

a. Abstract
b. Assessment of Need and Justification for the Program
c. Program plan and narrative
d. Organizational capability
e. Staffing Plan
f. Management and Evaluation of Program
g. Budget

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: http://www.cdc.gov/od/pgo/forminfo.htm. Forms are in the application kit. On or before August 21, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Assessment of Need and Justification (20 points)

Extent to which the applicant demonstrates understanding of the requirements, problems, objectives, complexities, and interactions required of the cooperative agreement.

2. Program Plan and Narrative (20 points)

a. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, related to the purpose of this project, and regularly monitored and evaluated.

b. Degree to which applicant provides a narrative that includes a working outline of the planned needs assessment, survey instrument draft, final report draft outline, names of potential contacts to be interviewed for the research portion of the needs assessment, and a working outline of the strategic plan.

3. Organizational Capacity (20 points)

a. Degree to which the applicant provides evidence of the ability to carry out the proposed project and the extent to which the applicant documents (1) the capability to achieve objectives similar to those of this project, and (2) success in mobilizing leaders of African American faith communities to integrate HIV prevention education and services into faith communities.

b. Degree to which applicant demonstrates the use of established mechanisms for communicating HIV/AIDS prevention information to members of faith communities.

c. degree to which applicant has capacity to identify and develop effective prevention information networks and dissemination systems.

d. degree to which applicant describes the use of established networks of contacts and knowledge of U.S. faith-based institutions, people, and resources in order to identify people and programs domestically for technical assistance and capacity building in targeted LIFE countries.

4. Staffing Plan (20 points)

Extent to which professional personnel involved in this project are qualified, including evidence of past achievements relevant to this project.

5. Management and Evaluation of Program (20 points)

Degree to which the applicant documents the adequacy of plans for administering and evaluating the project.

6. Budget (not scored)

Extent to which the estimated cost of the project (the budget) is reasonable.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. annual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–4 HIV/AIDS Confidentiality Provisions
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, 42 U.S.C. section 247b(k)(2). The Catalog of Federal Domestic Assistance number is 93.941, HIV Demonstration, Research, Public and Professional Education Projects.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Julia L. Valentine, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Room 3000, 2920 Brandywine Road, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2732, E-mail: jxv1@cdc.gov.

For program technical assistance, contact: Leo Weakland, Deputy Coordinator, Global AIDS Activity (GAA), National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, M/S E–07, Atlanta, GA 30333, Telephone number (404) 639–8016, Email address: lfw0@cdc.gov.

Dated: June 30, 2000.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17179 Filed 7–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–004]

Administration for Native Americans; Availability of Financial Assistance.

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance for information dissemination and strategy development relating to the de-regulation of electricity and its impact upon tribal populations. Projects would be funded in four areas—1 national grant and 3 grants in the following geographic areas: Area I—WA, OR, ID, western MT; Area II—ND, SD, NE, KS, eastern MT, MN, WI; Area III—CA, NV, UT, AZ, NM, CO, WY. This assistance, in the form of competitive grants is to be administered by the Administration for Native Americans.

SUMMARY: The Administration for Native Americans (ANA) announces the availability of fiscal year 2000 funds for information dissemination and strategy development relating to the de-regulation of electricity as it affects Indian Tribes and other Native American communities. Outreach activities would focus primarily on the energy policies established as a result of the Energy Policy Act of 1992, such as: (1) the Energy Planning and Management Program; and (2) the Comprehensive Electricity Competition Plan, implemented by the Clinton administration. The Energy Policy Act also contains provisions affecting Indian Tribes and Native communities and should be included in information dissemination/outreach activities. ANA plans to fund four (4) grants—one at the national level and the others in the following geographic areas: Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, WY. These projects are for the purpose of developing comprehensive electricity de-regulation information dissemination and strategies designed to assist tribal and community leaders in making informed decisions relating to participation in new energy relationships as both a potential supplier and consumer.

Financial assistance provided by ANA in support of projects in this area is intended to promote information dissemination and strategy development concerning the de-regulation of electricity for the benefit of all Indian Tribes and Native communities affected by these changes in the electricity industry.

DATES: The closing data for receipt of applications is August 7, 2000.

ADDRESSES: Application kits, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained from:

RJS & Associates, Inc., Dr. Robert Swan, C.E.O., RR1, Box 694, Box Elder, MT 59521, Tel: 406–395–4727 or 888–838–4757, Fax: 406–395–4759, e-mail: *rjsinc@rjsinc.org*, website: http//www.rjsinc.org/region2.html

Native American Management Services, Inc., Tonya Parker, Project Director, 6858 Old Dominion Drive, Suite 302, McLean, VA 22101, Tel: 703–821–2226 or 800–388–7670, Fax: 703–821–3680 e-mail: *nams@namsinc.org*

Development Associates, Inc., E. Robles, Project Director, 1475 North Broadway, Suite 200, Walnut Creek, CA 94596, Tel: 925–935–9711 or 800–666–9711, Fax: 925–935–0413 e-mail: *ana3@devassoc.com*, website: *http://www.devassoc.com/ana/anaversion2.htm*

FOR FURTHER INFORMATION CONTACT: ANA Help Desk, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop HHH 348F, Washington, D.C. 20447, Tel: (202) 690–7776 or toll free 1–877–922–9262 Fax: (202) 690–7441.

Copies of this program announcement and many of the required forms may be obtained electronically at the ANA web page: *www.acf.dhhs.gov/programs/ana/*

Introduction and Purpose

This Announcement describes the availability of fiscal year 2000 financial assistance for grants to develop and disseminate consistent program

information on the de-regulation of electricity as it affects Indian Tribes and Native communities.

ANA fully supports and assists tribal and Alaska Native Village governments, Native American institutions, and local leadership in exercising local control and decision-making over their resources. Consistent with this policy, ANA will assist Indian Tribes and Native communities in obtaining the most recent and relevant information regarding de-regulation of the electricity industry. This information will assist Tribes in making informed decisions about options under new regulations resulting from the Energy Policy Act of 1992. Outreach materials and activities must fully address the range of options available to Indian Tribes and Native communities under de-regulation. Types of information to be provided include but are not limited to: The latest agreements Tribes have made with federal power marketing agencies such as Western Area Power Administration (WAPA) and Bonneville Power Administration (BPA); federal funding and future potential arrangements among Indian Tribes, Federal agencies, state governments, power companies, and other energy resource entities.

This will be accomplished by funding four (4) information dissemination and strategy development grants, consisting of 1 national grant and 3 grants in the following geographic areas: Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, WY. The emphasis on information dissemination in these geographic areas is based upon: (1) The high concentration of tribal populations in those areas; and (2) the imminent nature of changes relating to electricity de-regulation for Tribes in the those regions, particularly for those Tribes affected by WAPA's power allocation. Eligibility for these grants extends to those listed in PART II, Section D ''Eligible Applicants''.

Funding authorization is provided under section [803(a) of the Native American Programs Act of 1974, as amended (Pub. L. 93–644, 88 Stat. 2324, 42 U.S.C. 2991b).

Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented in this announcement. Applicants may submit proposals for more than one geographic area, but it is anticipated that no single organization will be awarded a grant for more than one area. However, should a shortage of highly ranked organizations develop, ANA may award more than one grant to an organization or may combine areas under one grant.

This program announcement consists of three parts:

Part I. ANA Policy and Goals

Provides general information about ANA's policies and goals as they relate to electricity de-regulation information dissemination and strategy development grants.

Part II. Electricity De-Regulation Information Dissemination and Strategy Development Grants

Describes the Electricity De-regulation Information Dissemination and Strategy Development Grants under which ANA is requesting applications.

The following sections provide specific information to be used to develop an application for ANA funds:

A. Purpose and Availability of Funds
B. Background
C. Competitive Geographical Areas of Consideration
D. Eligible Applicants
E. Grantee Share of the Project
F. Review Criteria
G. Application Due Date
H. Contacts to Obtain Further Information

Part III. General Application Information and Guidance

Provides important information and guidance that must be taken into account in developing an application for one or more of the four (4) geographic areas. These geographic areas are defined in PART II, Section C. ''Competitive Geographic Areas of Consideration''.

Part I—ANA Policy and Goals

The mission of the Administration for Native Americans is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians and other Native American Pacific Islanders. ANA believes that the responsibility of achieving self-sufficiency resides with the governing bodies of Indian Tribes, Alaska Native Villages and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize and direct resources in a comprehensive manner consistent with its long-range goals.

ANA fully supports and assists tribal and Alaska Native Village governments, Native American institutions, and local leadership in exercising local control and decision-making over their resources.

Consistent with this policy, ANA is offering federal assistance through grant projects designed to assist Indian Tribes and Native communities to gain information relating to the de-regulation of electricity. Information and analysis to be provided through these four (4) ANA grants must fully address the range of options available to Indian Tribes and Native communities.

ANA will provide financial assistance to successful applicants to disseminate information about de-regulation of electricity in specific geographic areas. These electricity de-regulation information dissemination and strategy development grants will last for up to one year. Applicants must describe concrete strategies to gather, organize and disseminate information. Planning for the project must consider the maximum use of all available resources, including: initial coordination with ANA, other government agencies, and energy related organizations to ensure that the electricity de-regulation information to be provided to Tribes is comprehensive and current; how resources will be directed to information dissemination; and comprehensive strategies for presenting the information, such as meetings, forums, workshops, cluster sessions and on-site presentations. Applicants should explain how they would use their in-house expertise and experience in developing their information dissemination strategies.

An application from a Federally-Recognized Tribe or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger Tribe, unless the application includes a Tribal Resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application.

Part II—Electricity De-Regulation Information Dissemination and Strategy Development Grants

This part describes ANA's funding authority, priorities, requirements and review criteria. The standard requirements necessary for each application as well as the standard ANA program guidance and technical guidance are described in Part III of this announcement.

A. Purpose and Availability of Funds

This Announcement describes the availability of fiscal year 2000 financial assistance for grants to develop and disseminate consistent program information on the de-regulation of electricity as it affects Indian Tribes and Native American communities.

Approximately a total of $850,000 of financial assistance is anticipated to be available for electricity de-regulation information dissemination and strategy development. ANA anticipates awarding four (4) competitive grants divided into (1) nationwide for $250,000

and (3) geographic areas for $200,000 each—Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, SY.

B. Background

The electricity industry in the United States is undergoing a complete restructuring process as a result of the federal government's move to de-regulate interstate electricity markets. Already more than half of the states representing the larger share of electricity consumption in the country have created competitive markets, particularly at the wholesale and industrial levels.

Competition is slowly spreading to the retail, residential market. In previous years, Tribes had little opportunity to seek lower prices or better service, although technically they were exempt from state regulation because all of the other players with whom they would do business were regulated. De-regulation and the opening of markets to competition provide Tribes with an opportunity for future economic and social development.

After passage of the Energy Policy Act of 1992, Tribes saw emerging opportunities arising from the de-regulation of the electricity industry. Tribes, tribal coalitions and organizations began working together with federal power marketing administrations (Bonneville Power Administration and Western Area Power Administration) to assure tribal status as preferred customers and recipients of low cost electricity. Before 1992, Tribes were essentially barred from receiving low-cost, federally-generated hydropower by WAPA's policy which required that a tribe obtain full utility status before receiving WAPA Power. In 1993, however, Deputy Energy Secretary Bill White decreed that Indian Tribes no longer were required to own their own distribution systems to received federal power allocations. Since 1993 Tribes have been designated as non-utility preference customers and are provided an allocation of low-cost, federally-generated hydropower. In 1995, WAPA published their final rule for the Energy Planning and Management (EPAM) Program, the goal of which is: (1) To require planning and efficient electric energy use by WAPA's firm power resource pools when existing resource commitments expire; and (2) to allocate power from these pools to new preference customers. Implications for Tribes include: Recognition of federally recognized Tribes as ''preference customers''; contractual arrangements with WAPA and local energy providers to manage energy allocation; tribal collaboration with local energy providers to transmit their energy allocation to end-users.

In order to assist Tribes in maximizing opportunities arising from these historic changes in the electricity industry, as ad hoc National Intertribal Energy Network was formed.

In 1999, representatives from over 200 Tribes met and produced the National Tribal Energy Vision for the Year 2010. Achieving this vision—that every tribe has the right to access a sufficient, reliable electricity supply at a reasonable price to meet its social and economic needs—was projected to come from three strategies: accessing hydropower as preference customers; taking advantage of local conventional and renewable energy resources to produce their own; and working together to purchase power in a competitive electricity market.

Tribes now have an opportunity to access federal hydropower; develop partnerships with other Tribes and private industry; set standards for service while protecting their emerging internal domestic market; develop their own programs and plans responsive to the local vision.

The information will be disseminated through four ANA grants—one (1) at the national level and three (3) in the following geographic areas—Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, WY. These grantees will assist Indian Tribes and Native communities in understanding and assessing their options resulting from the de-regulation of electricity. Such information may include the background and current status of electricity de-regulation; data systems and other administrative requirements needed to enter into collaborative or contractual arrangements such as the EPAM Program; current or anticipated funds available to Indian Tribes and Native communities in designing new energy programs and technologies; implications of the National Tribal Energy Vision for the Year 2010; opportunities for Tribes in energy infrastructure development, accessing outside markets for tribal energy services, purchasing power in a competitive electricity market, and opportunities in creating utility ordinates and operations.

Applications should also address gathering information and assuring that all information provided to Tribes is authoritative, comprehensive and current. Proposals should be as specific as possible in identifying how information will be disseminated to Tribes and how options will be explored. Proposals should also clearly identify the approaches to be taken, such as meetings, forums, cluster groups, and on-site presentations. A recognition of the diversity of local tribal needs and capabilities should also be fully articulated. Information and strategies developed in the three geographic area projects will be shared with the national project, and the national project will work together with an coordinate closely with the three geographic area projects.

C. Competitive Areas of Consideration

In addition to the national project, three projects will cover the following geographic areas:—Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, WY.

Applicants may submit one application per grographic area. An applicant may receive only one grant, regardless of the number of areas in which it competes. Should a shortage of highly ranked organizations develop, however, ANA may award more than one grant to an organization or may combine geographic areas under one grant.

D. Eligible Applicants

The following organizations are eligible to apply under this announcement:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native Villages as defined in the Alaska Native Claims and Settlement Act (ANCSA) and/or non-profit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village-specific projects;
- Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these Islands or on the continental United States);
- Public and nonprofit private agencies serving Native peoples from Guam, American Samoa, Palau, or the

Commonwealth of the Northern Mariana Islands (The populations served may be located on these islands or in the United States);

• Tribally controlled community colleges, Tribally controlled post secondary vocational institutions, and Native controlled colleges and universities located in Hawaii, Guam, American Samoa, Palau or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders;

• Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

Note: Current ANA SEDS grantees are eligible to apply under this announcement. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a Tribe or an Alaska Native Village government is proposing a project benefiting Native Americans, Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. To establish compliance with this requirement in the regulations, applicants must provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories; (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

E. Grantee Share of the Project

Grantees must provide at least 20 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.

Therefore, a project requesting $200,000 in Federal funds must include a match of at least $50,000 (20% total project cost). As per 45 CFR Part 74.2, In-Kind contributions is defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.''

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows: Indian self-determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b) of the Native American Program Regulations.

F. Review Criteria

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which, are responsive to this program announcement. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Goals and Available Resources (20 points)

a. the application describes the project goals and strategy, including: how applicant's goals relate to the de-regulation of electricity as it affects Indian Tribes and Native American communities how the proposed project intends to achieve these goals; Applications must clearly explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

b. Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents or commitment of resources, not merely letters of support. ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources. ''Letters and other documents of commitment'' are binding when they specifically state the nature the amount, and conditions under which another individual, agency or organization will support a project funded with ANA funds.

These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

(2) Organizational Capabilities and Qualifications. (25 points)

a. The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed cope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project. Applicant *must* also explain how organizational experience and expertise in the area of energy resource management will benefit the project.

b. Position descriptions and/or resumes of key personnel, including those of consultants, represented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (30 points)

The application proposes specific project Objective Work Plans with activities related to each specific objective. The Objective Work Plan(s) in

the application includes project objectives and activities for the budget period and demonstrates that each of the objectives and its activities: Identifies the basic approach to be used in collecting, disseminating and presenting electricity de-regulation information; includes initial coordination with ANA; includes strategies and methods for analyzing options available to Indian Tribes and Native communities as a result of electricity de-regulation; is measurable and/or quantifiable in terms of results or outcomes; clearly relates to the applicant's goals and strategies; can be accomplished with the available or expected resources during the proposed project period; indicates when the objective, and major activities under each objective, will be accomplished; specifies who will conduct the activities under each objective;

(4) Results or Benefits Expected. (15 points)

Completion of the proposed objectives will result in specific, measurable results. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of the project.

(5) Budget. (10 points)

A detailed and fully explained budget is provided for the budget period requested which: Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source; Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and Requests funds which are appropriate and necessary for the scope of the proposed project.

Part III—General Application Information and Guidance

A. General Considerations

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. Applicants must show the relationship of non-AnA funded activities to those objectives and activities that are funded with ANA grant funds.

Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. Even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs. All projects funded by ANA must be completed by the end of the project period. ''Completed'' means that the project ANA funded is finished, and the desired result(s) have been attained.

B. Activities That Cannot Be Funded by ANA

The Administration for Native Americans does not fund projects that operate indefinitely or require ANA funding on a recurring basis. The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. ''Core administration'' is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

However, functions and activities that are clearly project related are eligible for grant funding. For example, management and administrative functions necessary to carry out an ANA approved project are not considered ''core administration'' and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section H, General Guidance to Applicants, below.

C. Length of Projects awards, on a competitive basis, will be for a one-year project and budget period.

D. Intergovernmental Review of Federal Programs, this program is not covered by Executive Order 12372 or 45 CFR part 100.

E. The Application Process

1. Availability of Application Forms

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 ANA. The application kits containing the necessary forms and instructions may be obtained from the following Training and Technical Assistance (T/TA) Providers:

RJS & Associates, Inc., Dr. Robert Swan, C.E.O., RR1, Box 694, Box Elder, MT 59521, Tel: 406–395–4727 or 888–838–4757 Fax:406–395–4759, e-mail: *rjsinc@rjsinc.org,* website: http//www.rjsinc.org/region2.html

Native American Management Services, Inc., Tonya Parker, Project Director, 6858 Old Dominion Drive, Suite 302, McLean, VA 22101, Tel: 703–821–2226 or 800–388–7670, Fax: 703–821–3680, e-mail: *nams@namsinc.org*

Development Associates, Inc., E. Robles, Project Director, 1475 North Broadway, Suite 200, Walnut Creek, CA 94596, Tel: 925–935–9711 or 800–666–9711, Fax: 925–935–0413, e-mail: *ana3@devassoc.com,* website: *http://www.devassoc.com/ana/anaversion2.htm*

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop HHH 326–F, Washington, DC 20447, Attention: Lois B. Hodge ANA No. 93612–0004.

Hand delivered applications are accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024.

The application (Form 424) must be signed by an individual authorized (1) to act for the applicant Tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Each eligible applicant may compete in all geographic areas. However, it can receive a grant award in only one of the geographic areas under this announcement. Should a shortage of highly ranked organizations develop, however, ANA may award more than one grant to an organization or may combine geographic areas under one grant.

The Administration for Native Americans will accept only one

application per geographic area from any one applicant. If an eligible applicant sends in two applications for the same geographic area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application. Four (4) separate ranking lists, one for each geographic area, will be utilized in the decision process.

3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review.
- Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section F below).
- Independent review panels consisting of reviewers familiar with American Indian Tribes, Native American communities and organizations, and the de-regulation of electricity evaluate each application using the published criteria. As a result of the review, a numerical score will be assigned to each application.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 30 days. Successful applicants are notified through an official Financial Assistance Award (FAA) document.
- ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.
- The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

F. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that: The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and the application is signed and submitted by the deadline explained in section I, Receipt of Applications, of this announcement.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

3. Appeal of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration.

G. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement. Projects will not be funded on the basis of need alone. In discussing the goals, strategy, and problems being addressed in the application, present sufficient background concerning these issues, including electricity deregulation policy.

This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project. Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For Tribes, a current signed resolution from the governing body of the Tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members Tribes, as well as a resolution from the applicant organization.

The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.

2. Technical Guidance

Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

For purposes of developing an application, applicants should plan for a project start date approximately 60 days after the closing date under which the application is submitted.

For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian Tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian Tribes which, may not yet be included on this list (*e.g.*, those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.

Eligible applicants may submit one application per geographic area. If an eligible applicant sends in two applications for the same geographic area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

An application from a Tribe or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger Tribe, unless the application includes a Tribal resolution which

clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application for the duration of the approved grant period.

The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.

An application with an original signature and two additional copies are required. The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

Line 15a of the Form 424 must specify the Federal funds requested for the Budget Period. The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. ''Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.'' During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Projects or Activities That Generally Will Not Meet The Purposes of This Announcement

The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. Project goals, which are not responsive to this program announcement.

Proposals from consortia of Tribes that are not specific with regard to support from, and roles of, member Tribes.

Projects that will not be completed by the end of the project period.

ANA will not fund the purchase of real estate (see 45 CFR 1336.50 (e)) or construction.

Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, Tribe or village.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations including program announcements. Information collection through this Program Announcement, including the program narrative statement, are approved by the OMB under control number 0980–0204, which expires April 30, 2003.

I. Receipt of Applications

The closing date for the submission of applications is [30 days from the date of publication in the **Federal Register**]. Applications postmarked after the closing date will be classified as late.

1. Deadline

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop 6C–462, Washington, DC 20447.

Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8 a.m. and 4:30 p.m., at: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

2. 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.

3. Extension of Deadlines

The Administration for Children and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., widespread disruption of the mails, or when it is anticipated that many of the applications will come from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number: 93.612 Native American programs)

Dated: June 30, 2000.

Gary Mounts,

Acting Commissioner, Administration for Native Americans.

[FR Doc. 00–17204 Filed 7–6–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 95F–0092, 95F–0129, 95F–0130, 97F–0175, 97F–0406, 97F–0414, 98F–0053, 98F–0058, 98F–0436, 98F–0714, 98F–1021, 99F–0804, 99F–1419, 99F–2080, 99F–2552, 99F–2908, 99F–2997, 99F–2998, and 99F–4373]

Withdrawal of Food Additive Petitions Subsequently Converted to Food Contact Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to a future filing of 19 food additive petitions proposing that the food additive regulations be amended to provide for the safe use of certain new food additives. The petitioners subsequently requested that their

petitions be converted to food-contact notifications for review under the agency's new premarket notification (PMN) program for food-contact substances. The requested uses are now the subjects of effective notifications.

FOR FURTHER INFORMATION CONTACT: Mark Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register** (FR), on the dates indicated in the table below, FDA announced the filing of 19 food additive petitions. These petitions proposed to amend the food additive regulations in the sections listed in the table to provide for the safe use of the listed substances intended for use in food-contact articles. Since publication of these filing notices, the petitioners have requested that their respective petitions be converted to food-contact notifications for review under the agency's new PMN process for food-contact substances and that their petitions be withdrawn when the corresponding notifications become effective. These petitions were converted to notifications and subsequently reviewed under the the PMN process. The requested uses are now the subjects of effective notifications. The corresponding food additive petitions are now withdrawn without prejudice to a future filing (21 CFR 171.7).

TABLE 1

FAP No.[1] and Docket No.	FCN No.[2]	FR Citation and Date	Company	Section/Part	Additive	Use
9B4662, 99F–1419	1	64 FR 28000, May 24, 1999	Milliken & Co. c/o Keller & Heckman.	Proposed new section in part 178.	Silver sodium hydrogen zirconium phosphate	Antimicrobial for polymers for food packaging.
8B4632, 98F–1021	3	63 FR 67075, Dec. 4,1998	Rohm and Haas Co. c/o Keller & Heckman.	176.170	Styrene acrylic copolymers	Paper and paperboard coating.
8B4564, 98F–0053	5	63 FR 5808, Feb. 4, 1998	Currently, BP Amoco Chemicals, Inc.	177.1480	Nitrile rubber modified acrylonitrile-methyl acrylate copolymers.	Beverage containers.
5B4455, 95F–0092	4	60 FR 22400, May 5, 1995	Currently, BP Amoco Chemicals, Inc.	177.1630	Ethylene terephthalate-isophthalate copolymers with 83–97 weight percent ethylene terephthalate units.	Components of food-contact articles.
5B4450, 95F–0130	8	60 FR 32526, June 22, 1995	Shell Chemicals Co.	177.1630	Ethylene terephthalate polymers containing less than 50 weight percent of polymer units derived from ethylene 2,6-naphthalene.	Components of food-contact articles.
5B4451, 95F–0129	9	60 FR 32159, June 20, 1995	Shell Chemicals Co.	Proposed new section in part 177.	Poly(oxy-1,2-ethanediyloxycarbonyl-2,6-napthalenediylcarbonyl) polymer and the copolymer poly(oxy-1,2-ethanediyloxy carbonyl-2,6-naphthalenediylcarbonyl) with ethylene terephthalate.	Components of food-contact articles.
8B4582, 98F–0058	10	63 FR 6571, Feb. 9, 1998	Currently, Sekisui Plastics Co., Ltd. c/o Ungaretti & Harris.	177.1630	Pyromellitic dianhydride	Modifier in ethylene terephthalate. copolymers.
7B4558, 97F–0406	12	62 FR 51873, Oct. 3, 1997	Sveriges Starkelseproducenter c/o Kirschman Assoc.	178.3520	Industrial starch modified with up to 21 percent 2,3-epoxypropyltrimethyl ammonium chloride.	Component of food-contact articles.
9B4685, 99F–2908	19	64 FR 47843, Sept. 1, 1999	The Goodyear Tire & Rubber Co. c/o Keller & Heckman.	175.300	Piperylene/2-methyl-2-butene/ alpha-methylstyrene terpolymer.	Can end cement.
9B4645, 99F–0804	11	64 FR 19182, Apr. 19, 1999	Rohm and Haas Co.	176.170 and 176.300.	4,5-Dichloro-2-n-octyl 3 (2H)-isothiazolone	Preservative and slimicide for paper and paperboard.

TABLE 1—Continued

FAP No.[1] and Docket No.	FCN No.[2]	FR Citation and Date	Company	Section/Part	Additive	Use
7B4554, 97F–0414	15	62 FR 52137, Oct. 6, 1997	Stilbene Whitening Agent Task Force c/o Keller & Heckman.	176.170	Benzenesulfonic acid, 2,2-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)-amino]-6-[(4-sulfonphenyl)amino]-1,3,5-triazin-2-yl]amino]-,tetrasodium salt.	Optical brightner in paper and paperboard.
8B4617, 98F–0714	20	63 FR 46226, Aug. 31, 1998	Asahi Denka Kogyo, K.K. c/o Japan Technical Information Center, Inc.	178.2010	2,2′-methylenebis(4,6-di-tert-butylphenyl)2-ethylhexyl phosphite.	Antioxidant and/or stabilizer in linear low density polyethylene.
8B4599, 98F–0436	21	63 FR 34188, June 23, 1998	Asahi Denka Kogyo, K.K. c/o Japan Technical Information Center, Inc.	178.2010	2,2′-methylenebis(4,6-di-tert-butylphenyl)2 -ethylhexyl phosphite.	Antioxidant and/or stabilizer in high density polyethylene.
9B4679, 99F–2552	22	64 FR 43189, Aug. 9, 1999	Asahi Denka Kogyo, K.K. c/o Japan Technical Information Center, Inc.	178.2010	Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl) ester.	Antioxidant and/or stabilizer in polyolefins.
9B4667, 99F–2080	23	64 FR 36361, July 6, 1999	Engelhard Corp.	178.3297	Solution of 1-naphthalenesulfonic acid, 12-[(2-hydroxy-6-sulfo-1-naphthalenyl)azo]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[4-chloro-5-ethyl- 2-sulfophenyl)azo]-6-hydroxy-, strontium salt (1:1) (C.I. Pigment Red 277).	Colorant for polymers.
7A4541, 97F–0175	30	62 FR 25633, May 9, 1997	Currently, Betz Dearborn c/o Keller and Heckman	173.310	Copolymer of acrylic acid and polyethylen eglycol allyl ether.	Boiler water additive.
9B4694, 99F–2998	29	64 FR 48654, Sept. 7, 1999	Asahi Denka Kogyo, K.K.	178.2010	Tridecanol phosphite condensation product with butylidenebis[2-(1,1-dimethylethyl)- 5-methyl-4,1-phenylene].	Antioxidant and/or stabilizer in styrene-isoprene-styrene copolymer to be used as a component of pressure-sensitive adhesives.
9B4691, 99F–2997	25	64 FR 49496, Sept. 13, 1999	Engelhard Corp.	178.3297	1-naphthelenesulfonic acid, 2-[(4,5-dihydro-3-methyl-5-oxo-1-(3-Sulfophenyl)-1H-pyrazol-4- yl)azo]-, strontium and calcium salt (1:1)(C.I. Pigment 209 and C.I. Pigment 209:1).	Colorant for polymers.
9B4698, 99F–4373	26	64 FR 58070, Oct. 28, 1999	Engelhard Corp.	178.3297	A solid solution of 2-naphthalene sulfonic acid, 15-[(5-chloro-4-methyl-2-sulfophenyl)azo]- 6-hydroxy]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[(4-chloro-5-ethyl-2-sulfonphenyl)azo]-6- hydroxy]-,strontium salt (1:1)(C.I. Pigment Red 276).	Colorant for polymers.

[1] Food additive petition number.
[2] Food-contact notification number.

Dated: June 28, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for food Safety and Applied Nutrition.

[FR Doc. 00–17199 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83N–0118; DESI 6514]

Oral Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Drug Efficacy Study Implementation; Caramiphen Edisylate; Final Actions on Supplemental New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) refuses to approve supplemental new drug applications (NDA's) for Tuss-Ornade Spansules and Liquid containing caramiphen edisylate and phenylpropanolamine hydrochloride. The basis for FDA's refusal to approve these products is that there is a lack of substantial evidence that caramiphen edisylate is effective.

DATES: Effective July 7, 2000.

ADDRESSES: Requests for applicability of this notice to a specific product should be identified with Docket No. 83N–0118 and reference number DESI 6514 and directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 9, 1973 (38 FR 4006), FDA classified the following drug products as less than effective for their labeled indications:

1. NDA 12–903; Tuss-Ornade Spansules containing caramiphen edisylate 20 milligrams (mg), chlorpheniramine maleate 8 mg, phenylpropanolamine hydrochloride 50 mg, and isopropamide iodide 2.5 mg; SmithKline Beecham Pharmaceuticals, P.O. Box 7929, Philadelphia, PA 19101–7929 (SmithKline).

2. NDA 13–068; Tuss-Ornade Liquid containing caramiphen edisylate 5 mg, chlorpheniramine maleate 2 mg, phenylpropanolamine hydrochloride 15 mg, and isopropamide iodide 0.75 mg; SmithKline.

In a notice published in the **Federal Register** of December 14, 1973 (38 FR 34481), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study implementation (DESI) program, for certain oral prescription drugs offered for relief of cough, cold, allergy, and related symptoms, including the aforementioned products. The exemption was granted because of the close relationship between drugs sold over the counter (OTC)—and thus subject to the ongoing OTC drug review (21 CFR part 330)—and prescription drugs offered for relief of cough, cold, allergies, and related symptoms.

In 1980 SmithKline submitted supplements proposing to reformulate the products listed above and marketed the following reformulated products pending a final determination of effectiveness:

1. NDA 12–903; caramiphen edisylate 40 mg and phenylpropanolamine hydrochloride 25 mg.

2. NDA 13–068; caramiphen edisylate 6.7 mg and phenylpropanolamine hydrochloride 12.5 mg.

In 1976 the OTC drug review panel for cold, cough, allergy, bronchodilator, and antiasthmatic drugs concluded that there were no well-controlled, objective, clinical studies documenting the effectiveness of caramiphen edisylate as an antitussive (41 FR 38312, September 9, 1976). The OTC monograph on antitussives was finalized in 1987 (52 FR 30042 at 30054, August 12, 1987).

Because of the lack of evidence that caramiphen edisylate is an effective antitussive, the Director of what was then the National Center for Drugs and Biologics concluded that there was a lack of substantial evidence that Tuss-Ornade Spansules and Liquid, either as previously formulated or as proposed for reformulation, would have all the effects they purported or were represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. The Director issued a notice of opportunity for hearing on two proposals: (1) To withdraw approval of the original formulations of Tuss-Ornade Spansules and Liquid, and (2) to refuse approval of the supplemental reformulations of the same products (48 FR 40322, September 6, 1983).

Neither SmithKline nor any other interested party requested a hearing on the proposal to withdraw approval of the original formulations of Tuss-Ornade Spansules and Liquid; therefore, approval of the old formulations was withdrawn (49 FR 10707, March 22, 1984). However, in response to the agency's September 6, 1983, proposal to refuse to approve the reformulated products, SmithKline and National Pharmaceutical Manufacturing Company (National) requested hearings. SmithKline submitted data and information in support of its hearing request.

FDA has reviewed these data and determined that there is not substantial evidence of the effectiveness of caramiphen edisylate. SmithKline and National no longer market the products named in their 1983 hearing requests and have withdrawn those hearing requests.

This notice applies to any drug product that is identical, related, or similar to the products named above and is not the subject of an approved NDA (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Prescription Drug Compliance and Surveillance (address above).

The Director of the Center for Drug Evaluation and Research, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and under the authority delegated to her (21 CFR 5.70 and 5.82) finds that, on the basis of new information before her with respect to Tuss-Ornade Spansules and Liquid, evaluated together with the evidence available to her when the applications were approved, there is a lack of substantial evidence that the products as proposed for reformulation will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, based on the foregoing finding, approvals and all the amendments and supplements thereto of NDA 12–903 and NDA 13–068 are withdrawn and refused effective July 7, 2000. Shipment in interstate commerce of the products listed above or of any identical, related, or similar product that is not the subject of an approved NDA will then be unlawful.

Dated: June 20, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–17197 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N–0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators Containing Isosorbide Dinitrate; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing conditional approval of 25 abbreviated new drug applications (ANDA's) for certain single-entity coronary vasodilator drug products containing isosorbide dinitrate. FDA is withdrawing approval because there is a lack of substantial evidence that these drugs are effective for their labeled indications relating to the treatment and prevention of anginal attacks. The sponsors of these conditionally approved products failed to provide required adequate bioavailability/bioequivalence data on the products to support full approval of the applications.

DATES: Effective August 7, 2000.

ADDRESSES: Requests for an opinion on the applicability of this notice to a specific product should be identified with Docket No. 77N–0240 and reference number DESI 1786 and directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1999 (64 FR 13802), FDA published a notice offering an opportunity for a hearing (NOOH) on a proposal to withdraw approval of 25 conditionally-approved ANDA's. The proposal was based on a lack of adequate bioavailability/bioequivalence data to support a finding of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)), 21 CFR 314.126, and 21 CFR part 320.

In response to the NOOH, Zeneca Pharmaceuticals requested a hearing for Sorbitrate Chewable Tablets (ANDA 86–388) and Sorbitrate Oral Tablets (ANDA 88–074). Zeneca later withdrew its hearing request for these products. No other sponsor of the products listed in the March 22, 1999, NOOH requested a hearing. As stated in the NOOH, the failure of an applicant or any other person subject to the notice to request a hearing constitutes an election by that person not to use the opportunity for a hearing and a waiver of any contentions concerning the legal status of that person's drug product(s). Accordingly, this notice withdraws conditional approval of the following ANDA's:

1. ANDA 85–783; Isordil Chewable Tablets containing 10 milligrams (mg) of isosorbide dinitrate per tablet; Wyeth-Ayerst Laboratories, (formerly held by Ives Laboratories, Inc.), P.O. Box 8299, Philadelphia, PA 19101.

2. ANDA 86–045; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726.

3. ANDA 86–186; Isosorbide Dinitrate (controlled release, colored) Capsules containing 40 mg of the drug per capsule; Eon Labs Manufacturing, Inc. (formerly held by The Vitarine Co., Inc.), 227–15 North Conduit Ave., Laurelton, NY 11413.

4. ANDA 86–191; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Bolar.

5. ANDA 86–224; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Geneva Pharmaceuticals, Inc. (formerly held by Cord Laboratories, Inc.), 2555 West Midway Blvd., P.O. Box 446, Broomfield, CO 80038–0446.

6. ANDA 86–362; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Bolar.

7. ANDA 86–388; Sorbitrate (chewable) Tablets containing 10 mg of isosorbide dinitrate per tablet; Zeneca Pharmaceuticals (formerly held by Stuart Pharmaceuticals), 1800 Concord Pike, Wilmington, DE 19897.

8. ANDA 86–788; Isosorbide Dinitrate (controlled release, green) Tablets containing 40 mg of the drug per tablet; Forest Laboratories, Inc., 919 Third Ave., New York, NY 10022.

9. ANDA 86–790; Isosorbide Dinitrate (controlled release, yellow) Tablets containing 40 mg of the drug per tablet; Forest.

10. ANDA 87–314; Isosorbide Dinitrate (chewable) Tablets containing 10 mg of the drug per tablet; D. M. Graham Laboratories, Inc., 58 Pearl St., P.O. Box P, Hobart, NY 13788.

11. ANDA 87–414; Isosorbide Dinitrate (controlled release, scarlet/clear) Capsules containing 40 mg of the drug per capsule; Eon Labs.

12. ANDA 87–461; Isosorbide Dinitrate (controlled release orange/clear) Capsules containing 40 mg of the drug per capsule; Eon Labs.

13. ANDA 87–477; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Ascot Hospital Pharmaceuticals, Inc., 8055 North Ridgeway Ave., Skokie, IL 60076.

14. ANDA 87–482; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Ascot.

15. ANDA 87–507; Isosorbide Dinitrate (controlled release, white/amethyst) Capsules containing 40 mg of the drug per capsule; Eon Labs.

16. ANDA 87–558; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977.

17. ANDA 87–680; Isosorbide Dinitrate (controlled release, white/clear) Capsules containing 40 mg of the drug; Eon Labs.

18. ANDA 87–694; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Vangard Labs, Inc., P.O. Box 1268, Glasgow, KY 42142–1268.

19. ANDA 87–700; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Vangard.

20. ANDA 88–074; Sorbitrate Tablets containing 20 mg of isosorbide dinitrate per tablet; Zeneca.

21. ANDA 88–428; Isosorbide Dinitrate (controlled release) Tablets containing 20 mg of the drug per tablet; Forest.

22. ANDA 88–589; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Barr Laboratories, Inc., Two Quaker Rd., P.O. Box 2900, Pomona, NY 10970–0519.

23. ANDA 88–590; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Barr.

24. ANDA 88–591; Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Barr.

25. ANDA 88–592; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Barr.

The effectiveness conclusions and conditions for marketing described in a notice published in the **Federal Register** of August 3, 1984 (49 FR 31151), also applied to the drug products described below. Although approval of these products was withdrawn previously based on the written requests of the applicants, who no longer market the products, this notice constitutes FDA's final conclusions on the effectiveness of these products.

1. NDA 17–226; Sorbitrate (controlled release) Tablets containing 40 mg isosorbide dinitrate per tablet; Zeneca.

2. ANDA 84–473; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Zenith Goldline Pharmaceuticals, 140 Legrand Ave., Northvale, NJ 07647.

3. ANDA 84–474; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Zenith Goldline.

4. ANDA 86–035; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Zenith Goldline.

5. ANDA 86–044; Isosorbide Dinitrate Tablets, containing 10 mg of the drug per tablet; Circa Pharmaceuticals (formerly held by Bolar Pharmaceutical Co., Inc.), 15 Grand Park Blvd., Athens, OH 45701.

6. ANDA 86–048; Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Bolar.

7. ANDA 86–051; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Bolar.

8. ANDA 86–071; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552.

9. ANDA 86–072; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Chelsea.

10. ANDA 86–073; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Chelsea.

11. ANDA 86–078; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Chelsea.

12. ANDA 86–302; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.

13. ANDA 86–304; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Purepac.

14. ANDA 86–855; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Lederle Laboratories, North Middletown Rd., Pearl River, NY 10965.

15. ANDA 86–858; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Lederle.

16. ANDA 86–861; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Lederle.

17. ANDA 86–862; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Lederle.

18. ANDA 86–922; Isosorbide Dinitrate (sublingual) Tablet containing 5 mg of the drug per tablet; Par.

19. ANDA 86–924; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Par.

20. ANDA 87–163; Isosorbide Dinitrate (chewable) Tablets containing 5 mg of the drug per tablet; D. M. Graham.

21. ANDA 87–344; Isosorbide Dinitrate (controlled release) Capsules containing 40 mg of the drug per capsule; Inwood Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.

22. ANDA 87–415; Isosorbide Dinitrate (controlled release, green/clear) Capsules containing 40 mg of the drug per capsule; Eon.

23. ANDA 87–469; Isosorbide Dinitrate (sublingual) Tablets containing 10 mg of the drug per tablet; Chelsea.

24. ANDA 87–474; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Ascot.

25. ANDA 87–475; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Ascot.

26. ANDA 87–476; Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Ascot.

27. ANDA 87–478; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Ascot.

28. ANDA 87–486; Isosorbide Dinitrate (controlled release) Capsules containing 40 mg of the drug per capsule; Ascot.

29. ANDA 87–490; Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Chelsea.

30. ANDA 87–491; Isosorbide Dinitrate Tablets containing 30 mg of the drug per tablet; Chelsea.

31. ANDA 87–618; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablets; Vangard.

32. ANDA 87–673; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Vangard.

33. ANDA 87–933; Isosorbide Dinitrate (sublingual) Tablets containing 10 mg of the drug per tablet; Par.

34. ANDA 88–005; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Unit Dose Laboratories, 1718 Northrock Court, Rockford, IL 61103.

35. ANDA 88–006; Isosorbide Dinitrate (sublingual) Tablets containing 10 mg of the drug per tablet; Unit Dose Labs.

36. ANDA 88–123; Sorbitrate (sublingual) Tablets containing 10 mg of isosorbide dinitrate per tablet; Zeneca.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application (NDA) is covered by the applications listed above and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Prescription Drug Compliance and Surveillance (address above).

The Director of the Center for Drug Evaluation and Research, under the act (section 505) and under authority delegated to her (21 CFR 5.82), finds that, on the basis of new information on the drugs and the evidence available when the applications were approved, there is a lack of substantial evidence that the products named above will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, based on the foregoing finding, approval of the applications listed above and all their amendments and supplements is withdrawn effective August 7, 2000. Shipment in interstate commerce of these products or of any identical, related, or similar product that is not the subject of a fully approved NDA will then be unlawful.

Dated: June 20, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–17198 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2145]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Final Guidance on ''Impurities in New Veterinary Medicinal Products'' (VICH GL11); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#92) entitled ''Impurities in New Veterinary Medicinal Products'' (VICH GL11). This guidance document has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The guidance is intended to assist in developing registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments at any time.

ADDRESSES: Copies of the final guidance document entitled ''Impurities in New Veterinary Medicinal Products'' (VICH GL11) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm. Persons without Internet access may submit written requests for a single copy of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the final guidance document to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: sthompso@cvm.fda.gov, or Robert C. Livingston, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5903, e-mail: rlivings@cvm.fda.gov.

Regarding the guidance document: Kevin J. Greenlees, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6977, e-mail: kgreenle@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Impurities in New Veterinary Medicinal Products

In the **Federal Register** of July 22, 1999 (64 FR 39514), FDA published the draft guidance entitled ''Impurities in New Veterinary Medicinal Products'' (VICH GL11) giving interested persons until August 23, 1999, to submit comments. After consideration of comments received, the final draft guidance was submitted to the VICH steering committee. At a meeting held on November 16 through 19, 1999, the VICH Steering Committee endorsed the final draft guidance, VICH GL11, for industry.

This document is intended to provide guidance for new animal drug applications (referred to as registration applications or marketing authorization in the final guidance) on the content and qualification of impurities in new drug substances intended to be used for new veterinary medicinal products produced by chemical syntheses and not previously registered in a region or member State. (Information collected is covered under OMB Control No. 0910–0032.)

This final guidance document represents current FDA thinking on impurities in new veterinary medicinal products and does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of applicable statutes and regulations.

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: June 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17200 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2215]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Final Guidance on ''Impurities in New Veterinary Drug Substances'' (VICH GL10); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#92) entitled ''Impurities in New Veterinary Drug Substances'' (VICH GL10). This guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The guidance is intended to assist in developing registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments at any time.

ADDRESSES: Copies of the final guidance entitled ''Impurities in New Veterinary Drug Substances'' (VICH GL10) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm. Persons without Internet access may submit written requests for a single copy of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the final guidance to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: sthompso@cvm.fda.gov, or Robert C. Livingston, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5903, e-mail: rlivings@cvm.fda.gov.

Regarding the guidance document: Kevin J. Greenlees, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6977, e-mail: kgreenle@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Impurities in New Veterinary Drug Substances

In the **Federal Register** of July 22, 1999 (64 FR 39516), FDA published the draft guidance entitled ''Impurities in New Veterinary Drug Substances'' (VICH GL10) giving interested persons until August 23, 1999, to submit comments. After consideration of comments received, the final draft guidance was submitted to the VICH steering committee. At a meeting held on November 16 through 19, 1999, the VICH Steering Committee endorsed the final draft guidance, VICH GL10, for industry.

This document is intended to provide guidance for new animal drug applications (referred to as registration applications or marketing authorization in the final guidance) on the content and qualification of impurities in new drug substances intended to be used for new veterinary medicinal products, produced by chemical syntheses and not previously registered in a region or member State. (Information collected is covered under OMB Control No. 0910–0032.)

This final guidance document represents current FDA thinking on impurities in new veterinary drug substances and does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of applicable statutes and regulations.

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: June 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17201 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–77]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Limitation on Liability and Information Collection Requirements Referenced in 42 CFR 411.404, 411.406, and 411.408;

Form No.: HCFA–R–77 (OMB# 0938–0465);

Use: The Medicare program requires to provide written notification of noncovered services to beneficiaries by the providers, practitioners, and suppliers. The notification gives the beneficiary, provider, practitioner, or supplier knowledge that Medicare will not pay for items or services mentioned in the notification. After this notification, any future claim for the same or similar services will not be paid by the program and the affected parties will be liable for the noncovered services.

Frequency: Other; as needed;

Affected Public: Individuals or Households;

Number of Respondents: 890,826;

Total Annual Responses: 3,563,304;

Total Annual Hours: 296,942.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards. Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 28, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–17214 Filed 7–6–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1140–N]

Medicare Program; Question and Answer Session on July 24, 2000 To Discuss Remaining Concerns About the Implementation of the Hospital Outpatient Prospective Payment System (PPS)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting to provide an opportunity for hospital administrators, hospital industry representatives, hospital professionals, community mental health centers, home health agencies, comprehensive outpatient rehabilitation facilities, beneficiary advocates and other interested parties, to have pre-submitted questions and issues answered regarding remaining concerns they may have about the August, 2000 implementation of the hospital outpatient prospective payment system. Appropriate HCFA staff will be present to ensure that those questions and concerns will be answered.

DATES: The meeting is scheduled for July 24, 2000 from 9:30 a.m. until 4 p.m., E.D.T. The morning session (9:30 a.m. until 12) will be for hospital providers and the afternoon session (1:30 p.m. until 4 p.m.) will be for other providers; that is, community mental health centers (CMHCs, home health agencies (HHAs), and comprehensive outpatient rehabilitation facilities (CORFs).

ADDRESSES: The meeting will be held in the HCFA Central Office Main Auditorium, 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Judy Hunt, (410) 786–7874 or Mary Loane, (410) 786–1405 (for registration information and pre-submitted questions).

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2000 a final rule with comment period on the hospital outpatient prospective payment system (PPS) was published. This new PPS will go into effect for hospital outpatient services designated by the Secretary, certain Part B services furnished to hospital inpatients who have no Part A coverage, and partial hospitalization services furnished by community mental health centers. This outpatient PPS was enacted as part of the Balanced Budget Act of 1997. This meeting will provide a forum, for outpatient facilities, to receive answers to their pre-submitted questions and issues concerning the August, 2000, implementation of hospital outpatient PPS.

The format of the meeting will be a question and answer session. Appropriate HCFA staff will be present to ensure that questions and concerns will be answered.

During this session, major provider organizations are invited to give a brief pre-scheduled statement on the coming implementation of the outpatient PPS. Those organizations wishing to take advantage of this opportunity should submit their statement in writing to HCFA not less than 3 working days prior to this meeting and make copies available to attendees on the day of the conference.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below.

Registration

Individuals may register by following the directions soon to be posted on the HCFA website, www.hcfa.gov. Once individuals are on this website, they will need to highlight the red bullet, in the lower right hand corner, titled ''Events, Meetings, and Workgroups.'' Individuals should also submit questions they would like to have answered, no later than July 14, 2000, by following the directions soon to be posted on the same HCFA website, www.hcfa.gov. The registration site will link you to the site for submission of questions.

Each participant will be provided with a meeting agenda at the time of the meeting.

If individuals have questions regarding registration; would like to register by phone; or would like to submit questions regarding hospital outpatient PPS issue, they should contact Judy Hunt (410) 786–7874 or Mary Loane (410) 786–1405.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 30, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–17136 Filed 7–6–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–27]

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.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest of HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *ENERGY:* Mr. Tom Knox, Department of Energy, Office of Contract & Resource Management, MA–52, Washington, DC 20585; (202) 586–8715; *NAVY:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll free numbers).

Dated: June 29, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 7/7/00

Suitable/Available Properties

Buildings (by State)

Alabama

Residence 1223
204 Akin Drive
Tuskegee Co: Macon AL 36083–
Landholding Agency: GSA
Property Number: 54200020023
Status: Excess
Comment: 1375 sq. ft., brick veneer, most recent use—residential
GSA Number: 4–A–AL–768.

West Virginia

Moundsville Federal Bldg.
7th Street
Moundsville Co: Marshall WV 26041–
Landholding Agency: GSA
Property Number: 54200020024
Status: Excess
Comment: 9674 sq. ft., good condition, presence of asbestos, most recent use—office space
GSA Number: 4–G–WV–535.

Land (by State)

Arizona

0.322 acres
Madison Street Property
Yuma Co: AZ 00000–
Landholding Agency: GSA
Property Number: 54200020025
Status: Excess
Comment: 14,026 sq. ft., irregular in shape, most recent use—former railroad right-of-way
GSA Number: 9–I–AZ–814.

Unsuitable Properties

Buildings (by State)

California

Bldg. 1442
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020106
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020107
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 13162
Marine Corps Base
Camp Pendleton Co: CA 92055–

Landholding Agency: Navy
Property Number: 77200020108
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 14100
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020109
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020110
Status: Unutilized
Reason: Extensive deterioration.

Florida

Bldg. 62
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number : 77200020111
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

Bldg. 94
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020112
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

New Mexico

Bldg. 22, TA–33
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020022
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

Bldg. 23, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reason: Secured Area.

Bldg. 37, TA–53
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reason: Secured Area.

Bldg. 121, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reason: Secured Area.

Ohio

Bldg. 22B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 28A
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020027
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 28B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020028
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

South Carolina

4 Industrial Bldgs.
Naval Weapons Station
Charleston
88, 92, 94, 354
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020113
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

4 Heat Plant Bldgs.
Naval Weapons Station
Charleston
89, 95, 355, 438
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

8 Security Bldgs.
Naval Weapons Station
Charleston
313, 859, 860, 897, 918, 1654, 1655, 3217
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

8 Storage Bldgs.
Naval Weapons Station
Charleston
307, 353, 799, 831, 861, 933, 984, 994
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020116
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

6 Bldgs.
Naval Weapons Station
Charleston
183, 855, 868, 968, 3238, 408
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020117
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

[FR Doc. 00–16961 Filed 7–6–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Dirk Starck, Eagle River, AK, PRT–029559

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Frank S. Monfrey, Anchorage, AK, PRT–029701

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammal

Applicant: W. Stephen Minore, Rockford, IL, PRT–029703

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 30, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–17173 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Gate Keepers Wild Life Sanctuary, Wichita, KS, PRT–029857

The applicant requests a permit to export and re-import leopard (*Panthera pardus*) and tiger (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: July 3, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–17262 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability; Travis County, TX; Golden-cheeked Warbler

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Golden-cheeked Warbler (*Dendroica chrysoparia*) During Construction and Operation of a Residential Development on a Portion of the 98-acre Lake of the Woods Property, Travis County, Texas (Luth).

SUMMARY: Thomas Luth (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–029780–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler. The proposed take would occur as a result of the construction and operation of a residential development on a portion of the 98-acre Lake of the Woods Property, Travis County, Texas.

An Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application has been prepared. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before September 5, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029780–0 (Luth) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Tom Luth plans to construct a residential development on 89.5 acres of the 98-acre Lake of the Woods Property, Travis County, Texas. This action will eliminate 89.5 acres and indirectly impact 32.5 additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of the golden-cheeked warbler by purchasing 286.8 acres worth of participation certificates from the Balcones Canyonlands Preserve, providing approximately $1,147,200 to the BCP for the specific purpose of land acquisition and management within golden-cheeked warbler habitat in Travis County, as identified by the Service.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17229 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Williamson & Associates, to commercialize a new marine induced polarization technology.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact: Jeff Wynn, U.S. Geological Survey, 954 National Center, Reston, VA 20192

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: June 21, 2000.

P. Patrick Leahy,

Chief Geologist.

[FR Doc. 00–17215 Filed 7–06–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–0777–XQ]

Call for Nomination for Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of vacancy on Resource Advisory Council and call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for the Bureau of Land Management's (BLM's) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC) in Nevada, to fill a vacancy on that RAC for an employee of the State of Nevada. The RAC provides advice and recommendations to BLM's Winnemucca and Carson City Field Offices on land use planning and management of the public lands within their geographic areas. Public nominations will be considered for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, the interests represented by the individuals appointed to the RAC must be balanced and representative of the various issues concerned with the management of public lands.

These include three categories, one of which is Category three, holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

The employee of a State agency whose term has not yet expired has resigned from this RAC, and this notice is to solicit nominations for a replacement. Nominations should be sent to Jo Simpson, Nevada State Office, BLM, P.O. Box 12000, Reno, Nevada, 89520–0006; Telephone (775) 861–6586.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, U.S. Department of the Interior, Bureau of Land Management, Office of Communications, P.O. Box 12000, Reno, Nevada, 89520–0006.

Dated: June 20, 2000.

Robert E. Stewart,

Acting Chief, Office of Communications.

[FR Doc. 00–17135 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–00–1020–PB]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on August 23–25, 2000, at the Best Western Inn and Suites, 3009 West Highway 66, Gallup, NM 87301.

There will be an optional all day a field trip on Wednesday, August 23, 2000. Planned for the first stop will be the Pittsburgh and Midway Mine to view the mining process and reclamation/revegetation of the mine area. The tour will proceed to the El Malpais National Conservation Area for an overview of the geology of the area, and a final stop at the bat caves. The optional tour will start at the Best Western Inn and Suites in Gallup, NM, at 8:30 a.m. and return to Gallup by 9 p.m. Transportation will be provided for RAC members. The meeting on Thursday, August 24, 2000, starts at 8:00 a.m. and will end about 5 p.m. The three established RAC Subcommittees may have late afternoon or evening meetings on this day. The exact time and location of the Subcommittee meetings will be established by the Chairperson of each Subcommittee earlier in the day during the RAC meeting.

On Friday, August 25, 2000, the meeting starts at 8 a.m. and will end about 3 p.m. The ending time of 3 p.m. may be changed depending on the work remaining for the RAC. The draft agenda for the RAC meeting includes an agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting on June 14 through 16, 2000, in Taos, NM, a check in from the RAC members, and the following planned presentations that also include discussions; a progress report on House Memorial 15, and a Standards and Guidelines update. The time from 10 a.m. until 12 noon will be taken up with a review of the Off Highway Vehicle issue. There will be a discussion on a handout from the previous meeting and review of the outcome of three Listening Meetings on the topic being held throughout the State during July.

Starting at 1 p.m. on August 24, 2000, there will be a 15 minute Public Comment Period for members of the public who are not able to be present for the regular Public Comment Period on Friday, August 25th, to address the RAC. Following will be presentations on the Pittsburgh and Midway Coal Mine, which also include discussions. The main focus will be on reclamation and revegetation of the mine areas. Planned presentations included will be representatives from the Pittsburgh and Midway Mine, the Navajo Nation, the State of NM, the Bureau of Land Management, and a speaker representing an environmental group. The meeting on Thursday will end about 5 p.m. The three established RAC Subcommittees may have late afternoon or evening meetings on this day. The exact time and location of the Subcommittee meetings will be established by the Chairperson of each Subcommittee earlier in the day during the RAC meeting.

The meeting on Friday, August 25th will start at 8 a.m. with a review of the agenda thus far. At 8:15 a.m., BLM State of the Field Office reports will take place, presented by the Field Office managers. The regular Public Comment Period for the Public to address the RAC is on the Friday, August 25, 2000, from 10 a.m. to 12 noon. The RAC may reduce or extend the end time of 12:00 noon depending on the number of people wishing to address the RAC. Anyone wishing to address the RAC should be present at the 10 a.m. starting time. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its agenda items. At 1 p.m. RAC Subcommittee reports from the Urban and Open Space Subcommittee, the Roads and Trails

Subcommittee, and the Oil and Gas Subcommittee, are scheduled. These reports are followed by RAC discussions and any RAC recommendations, development of draft agenda items and selection of a location for the next RAC meeting, and a RAC assessment of the current meeting.

FOR FURTHER INFORMATION CONTACT: Mary White, Nex Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated; June 29, 2000.

M.J. Chavez,

State Director.

[FR Doc. 00–17180 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–AA]

Notice of meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting on August 10 at the Forsyth Country Club, Forsyth, Montana starting at 8:00 a.m. Primary agenda topics include an update on coalbed methane development, continued discussion on access, and the status of the Weatherman Draw proposal.

The meeting is open to the public and the public comment period is set for 11 a.m. on August 10. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: June 27, 2000.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 00–17217 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–00–1220–PA–24 1A]

Notice of Bureau of Land Management National Off-Highway-Vehicle Strategy; Request for Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comment.

SUMMARY: Responding to an increasing public interest in issues surrounding the use of off-highway-vehicles (OHVs) on public lands, the Bureau of Land Management is announcing the public involvement phase of the National Off-Highway Vehicle Strategy, seeking public comments on OHV-related issues.

The Bureau of Land Management (BLM) is seeking ideas and solutions from the public on how best to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands. The BLM will develop a strategy based on public input to address land-management issues prompted by the growing popularity of OHV use.

DATES: You should submit your comments by August 31, 2000. BLM will not necessarily consider comments postmarked or received by messenger or electronic mail after the above date in the decisionmaking process on the OHV strategy.

ADDRESSES: Mail: Director (250), Bureau of Land Management, Administrative Record, Room 204 LS, 1849 C Street, NW., Washington, DC 20240.

Personal or messenger delivery: Room 204, 1620 L Street, NW, Washington, DC 20036.

Internet e-mail: Special comment site at www.blm.gov.

Mailer: We will send you an OHV mailer if you contact the Bureau of Land Management at 1849 C Street NW., LSB 406–C, Washington, DC 20240, Attn: Correspondence—WO 615

Other: We will also accept comments at local or State ''listening meetings'' which will be held by BLM or BLM Resource Advisory Councils (RACs).

FOR FURTHER INFORMATION CONTACT: Rodger E. Schmitt, National Recreation Group Manager, Bureau of Land Management, Washington, DC, at (202) 452–7771.

SUPPLEMENTARY INFORMATION: The goal of the OHV strategy is to provide local managers a framework for addressing issues such as current OHV designations, executive orders, regulations, trends in management and management approaches, route inventory needs, resource issues, special management and sensitive areas and resources, monitoring, education, law enforcement, and budget.

BLM management of OHVs is guided by Executive Orders 11644 made in 1972 and 11989 made in 1977, when only about five million OHVs were in use nationally. Today, that number has risen dramatically. In addition, technological advances now make it possible for these vehicles to travel over lands that were formerly inaccessible. Many of BLM's land use plans do not adequately address the increases in OHV use. In addition, BLM's budget-related resources—including the number of recreation specialists and law enforcement personnel—have not kept pace with the past decade's growth in OHV use. These factors, plus litigation over OHV management issues, have created the need for a national OHV management strategy.

Comments will be collected through August and will be analyzed and used to help BLM develop guidance for local solutions by November 30. Once the guidance is written, BLM will implement it locally with the help of public and private partners to achieve on-the-ground goals.

Jack Peterson,

Acting National Recreation Group Manager.

[FR Doc. 00–17216 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 1, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 24, 2000.

Beth M. Boland,

Acting Keeper of the National Register.

CONNECTICUT

Hartford County

Coult, Abraham, House, 1695 Hebron Ave., Glastonbury, 00000834

Hartford Electric Light Company Maple Avenue Sub-Station, 686 Maple Ave., Hartford, 00000833

New Haven County

West Haven Green Historic District, Roughly along Main St., Campbell St., Church St. and Savin St., West Haven, 00000832

NEBRASKA

Lancaster County

Herter Farmstead, 4949 S 148th, Walton, 00000835

NEW YORK

Rensselaer County

St. Mark's Episcopal Church, Main St., Hoosick Falls, 00000836

Sullivan County

Hankins Stone Arch Bridge, (Upper Delaware Valley, New York and Pennsylvania, MPS) Sullivan Cty. Rd. 94, E., Hankins, 00000838

Manny, Anthony, House, (Upper Delaware Valley, New York and Pennsylvania, MPS) 6 Hankins Rd., Hankins, 00000840

Tusten Stone Arch Bridge, (Upper Delaware Valley, New York and Pennsylvania, MPS) Tusten Rd. at Ten Mile River, Tusten, 00000839

Westchester County

Scarsdale Railroad Station, Popham Rd. at Bronx River Pkwy., Scarsdale, 00000837

NORTH CAROLINA

Chatham County

Siler City Commercial Historic District, Roughly bounded by Second Ave., Birch Ave., Third St. and Beaver St., Siler City, 00000841

Polk County

Railway Clerks' Mountain House, US 176, 0.6 mi. Se of jct. with Ozone Rd., Saluda, 00000842

PENNSYLVANIA

Berks County

Red Men Hall, 831–833 Walnut St., Reading, 00000843

Chester County

Zook House, (West Whiteland Township MRA) 100 Exton Sq., Exton, W. Whiteland, 00000844

Dauphin County

Star Barn Complex, Nissley Dr. at PA 283, Lower Swatara, 00000845

Lancaster County

New Holland Machine Company, 146 E. Franklin St., New Holland, 00000846

Philadelphia County

Bell Telephone Company Building, 1827–35 Arch St., Philadephia, 00000849

York County

Bixler, Michael and Magdealena Farmstead, 400 Mundis Race Rd., East Manchester, 00000850

Red Lion Borough Historic District, Roughly bounded by Edgewood Ave., Windsor Twp. line, MD&PA RR., Chestnut Rd., Country Club Rd., and York Twp. line., Red Line, 00000847

Sinking Springs Farms, Roughly bounded by Church Rd., Sinking Springs Ln., N. George St., Locust Ln., Susquehanna Trail and PA 238, Manchester, 00000848

WISCONSIN

Ozaukee County

Bigelow School, 4228 W. Bonniwell Rd., Mequon, 00000851

WYOMING

Crook County

Entrance Road—Devils Tower National Monument, (Devils Tower National Monument MPS) Devils Tower National Monument, Devils Tower, 00000854

Entrance Station—Devils Tower National Monument, (Devils Tower National Monument MPS) Devils Tower National Monument, Devils Tower, 00000853

Old Headquarters Area Historic District, (Devils Tower National Monument MPS) Devils Tower National Monument, Devils Tower, 00000852

Tower Ladder—Devils Tower National Monument, (Devils Tower National Monument MPS) Devils Tower National Monument, Devils Tower, 00000855

[FR Doc. 00–17267 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Interim Surplus Criteria

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of availability of a draft environmental impact statement and public hearings for the proposed adoption of Colorado River Interim Surplus Criteria: INT–DES 00–25.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), has issued a Draft Environmental Impact Statement (DEIS) on the proposed adoption of specific criteria under which surplus water conditions may be determined in the Lower Colorado River Basin during the next 15 years. Cooperating agencies are the National Park Service and the International Boundary and Water Commission, United States Section. Information on public hearings may be found below in the **DATES** section.

ADDRESSES: Send comments on the DEIS to Ms. Jayne Harkins, Attention BCOO–4600, PO Box 61470, Boulder City, Nevada, 89006–1470, or fax comments to Ms. Harkins at (702) 293–8042. Comments must be received no later than September 8, 2000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

DATES: Comments on this DEIS must be received no later than September 8, 2000.

Public hearings will be held to receive written or verbal comments on the DEIS from interested organizations and individuals on the environmental impacts of the proposal. The hearings

will be held at the following times and locations:

- August 3, Meeting Room 1 on Level 3, Terminal 4, Phoenix Sky Harbor International Airport, Phoenix, Arizona, 7 p.m.
- August 8, Big Bear Room, Doubletree Hotel, 222 N. Vineyard Ave., Ontario, CA, 7 p.m.
- August 10, Jazz Room, Salt Lake City International Airport, 765 Terminal Drive, Salt Lake City, Utah, 7 p.m.
- August 15, Comfort Dental Conference Room, Las Vegas Chamber of Commerce, 3720 Howard Hughes Parkway, Las Vegas, NV, 7 p.m.

In addition to the public hearings, a separate hydrologic modeling meeting will be held on the same day as the public hearing in Las Vegas, NV. Reclamation will provide detailed assumptions and respond to questions regarding the model runs, use schedules, and post-processing analysis that was completed for this DEIS. The time and location for this technical meeting is as follows:

- August 15, Comfort Dental Conference Room, Las Vegas Chamber of Commerce, 3720 Howard Hughes Parkway, Las Vegas, NV, 9 a.m. to 5 p.m.

The hearings and the hydrologic modeling meeting will accommodate those with hearing impairments or other special requirements upon request by calling Janet Steele at (702) 293–8551 at least 48 hours prior to the hearing.

The DEIS is available for viewing on the Internet at *http://www.lc.usbr.gov* and *http://www.uc.usbr.gov.* Copies of the DEIS, in the form of a printed document or on compact disk, are available upon written request to the following address: Ms. Janet Steele, Attention BCOO–4601, PO Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8785, or by fax at (702) 293–8042.

See **SUPPLEMENTARY INFORMATION** section for a list of libraries where the DEIS is available for public inspection and review.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ms. Jayne Harkins at the above address or telephone Ms. Harkins at (702) 293–8785.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior (Secretary) currently manages the lower Colorado River system in accordance with federal law (including the provisions of the 1964 U.S. Supreme Court decree, as supplemented, in *Arizona* v. *California* (the Decree)), the Colorado River Basin Project Act of 1968 (CRBPA) and Long Range Operating Criteria (LROC) pursuant to the CRBPA. Within this legal framework, the Secretary makes annual determinations regarding the availability of surplus water from Lake Mead by considering various factors, including the amount of water in storage and predictions for natural runoff. The Decree provides that if there exists sufficient water available in a single year for release from Lake Mead to satisfy annual consumptive use in the states of Arizona, California, and Nevada in excess of 7.5 million-acre feet, such water may be determined by the Secretary to be made available as surplus water.

The purpose of and need for establishing interim surplus criteria is to assist the Secretary in making annual determinations of surplus conditions, and will afford entities that have contracted for surplus water a greater degree of predictability with respect to the annual existence of surplus water available for diversion. This greater predictability would assist these entities in the management of their water resources.

The DEIS presents four possible alternatives for implementation, plus a ''No Action Alternative.'' The DEIS does not include a preferred alternative. The interim surplus criteria alternatives have been formulated to be consistent with applicable federal law and the LROC, described above.

The four potential action alternatives are: a ''Flood Control Alternative,'' which would provide surplus water only when flood control releases from Lake Mead are needed, based on the current criteria for making such releases; the ''Six States Alternative'' and ''California Alternative,'' both of which specify various Lake Mead water surface elevations to be used as ''triggers'' to indicate when surplus conditions exist; and the ''Shortage Protection Alternative,'' which would permit surplus conditions to be determined above a specific elevation positioned to ensure enough water remains in Lake Mead to provide a one-year water supply to Arizona, California, Nevada, and Mexico, and to protect against dropping the lake's water level below a specified elevation.

Libraries Where the Draft EIS is Available for Public Inspection and Review:

- Department of the Interior, Natural Resources Library, 1849 C Street, NW, Washington, DC 20240.
- Lower Colorado Regional Office, PO Box 61470, Boulder City, Nevada 89006–1470.
- Phoenix Area Office, Concorde Commerce Center, 2222 West Dunlap Ave., Suite 100, Phoenix, Arizona 85069–1169.
- Yuma Area Office, 7301 Calle Aqua Salada, Yuma, Arizona, 85366–7504.
- Upper Colorado Regional Office, 125 South State St., Room 6107, Salt Lake City, Utah 84138–1102.
- Boulder City Library, 813 Arizona, Boulder City, NV 89005. Henderson District Public Library, 280 South Water St., Henderson, NV 89015.
- Los Angeles Central Library, 630 W 5th St. Los Angeles, CA 90071.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- Salt Lake City Public Library, 209 E 500 S., Salt Lake City, UT 84111.
- Albuquerque Public Library, 501 Copper Ave. NW, Albuquerque, NM 87102.
- Denver Public Library, 10 W 14th Ave. Pkwy, Denver, CO 80204.
- Laramie County Library, 2800 Central Ave., Cheyenne, WY 82001.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004.
- Government Reference Library, City Hall, 9th Floor, Tucson, AZ 85701.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ, 86403.
- Parker Public Library, 1001 South Navajo Ave., Parker, AZ 85344.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.

Dated: June 30, 2000.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance, Department of the Interior.

[FR Doc. 00–17194 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–872–883 (Preliminary)]

Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–872–883 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela of certain steel concrete reinforcing bars, provided for in subheading 7214.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by August 14, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 21, 2000.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Jeff Clark (202–205–3195), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to petitions filed on June 28, 2000, by the Rebar Trade Action Coalition (RTAC) (Washington, DC) and its individual members.[1]

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. 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 investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 19, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jeff Clark (202–205–3195) not later than July 17, 2000, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17261 Filed 7–6–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The members of RTAC are AmeriSteel (Tampa, FL); Auburn Steel Co., Inc. (Auburn, NY); Birmingham Steel Corp. (Birmingham, AL); Border Steel, Inc. (El Paso, TX); Marion Steel Company (Marion, OH); Riverview Steel (Glassport, PA); Nucor Steel (Darlington, SC); and CMC Steel Group (Seguin, TX). Auburn Steel Co., Inc., is not a petitioner with respect to Indonesia and Japan.

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement in Accordance With the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on June 26, 2000, a proposed Settlement Agreement was lodged with the United States District Court for the Eastern District of Virginia in *Mobil Oil Corporation* v. *United States,* Civil Action No. 99–1467–A. The proposed Settlement Agreement settles all CERCLA contribution claims asserted by Mobil Oil Corporation (''Mobil'') against the United States, as well as certain CERCLA claims by the United States against Mobil. These

claims relate to response actions undertaken at certain portions of the Stibnite Mining Area (''Stibnite Area'') in Valley County, Idaho.

After carrying out certain response actions pursuant to an Administrative Order on Consent between the U.S. Environmental Protection Agency (''EPA'') and the U.S. Department of Agriculture, Forest Service (''FS''), and Mobil, Mobil sued the United States in the United States District Court for the Eastern District of Virginia pursuant to Sections 107(a)(2) and 113(f), (g) (2) of CERCLA, 42 U.S.C. 9607(a)(2) and 9613(f), (g)(2), alleging that the United States, on behalf of certain Federal Agencies, is liable as an owner and operator for a portion of the necessary costs of response that Mobil has incurred in connection with the Stibnite Area. Pursuant to the Settlement Agreement, Mobil will pay $264,000 into the EPA Hazardous Substances Superfund to reimburse a portion of the response costs incurred by the United States, and the United States will pay Mobil $1.55 million, to reimburse Mobil for a portion of the costs Mobil has incurred in carrying out response actions in the Stibnite Area.

Under the Settlement Agreement, the United States covenants not to sue Mobil pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. 9606, 9607(a), and 9613 for certain response costs or for the performance certain response actions for certain discrete portions areas of the Stibnite Area. This covenant not to sue expressly does not include: (1) Claims based on Mobil's failure to meet a requirement of the Agreement; (2) liability arising from disposal, release, or threat of release of hazardous substances outside of the Site; (3) liability for future disposal of hazardous substances at the Site, other than as ordered by EPA; (4) liability for natural resources damages, and for the costs of any natural resource damage assessments; (5) criminal liability; and (6) liability, not to exceed $1.1 million, for the costs of future response actions, including constructing an impermeable cap, at a portion of the Stibnite Area.

Mobil covenants not to sue the United States for: (1) Any claim for reimbursement from the EPA Hazardous Substance Superfund (*see* 26 U.S.C. 9507); (2) any other costs, damages, attorneys fees, or claims arising out of response activities at the site; (3) any claim under Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, relating to the Site, except claims for natural resources damages and for the costs of any natural resource damage assessments; and (4) any claim regarding Mobil's costs incurred in implementing the work required under the VCO.

Under the Settlement Agreement, Mobil and the Settling Federal Agencies are entitled to protection from contribution actions or claims, to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4), as to past response costs incurred by the United States, all response actions taken and to be taken by or at the direction of the United States, and all response costs incurred and to be incurred by the United States in connection with the areas addressed in the Settlement.

The Department of Justice will receive written comments by mail relating to the proposed Settlement Agreement for thirty (30) days from the date of publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *Mobil Oil Corporation* v. *United States,* DOJ. Ref. No. 90–11–6–05768.

The proposed Settlement Agreement may be examined at the following location: U.S. Environmental Protection Agency, 1435 N. Orchard Street, Second Floor, Boise, Idaho 83706, 208–378–5746.

A copy of the Settlement Agreement and exhibits (if requested) may also be obtained by mail from: Allison Booker, U.S. Department of Justice, Environmental Defense Section, Environment and Natural Resources Division, P.O. Box 23986, Washington, D.C. 20026–3986.

* * * * *

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 00–17219 Filed 7–6–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 30, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), by August 7, 2000.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title: Underground Retorts.

Type of Review: Extension.

OMB Number: 1219–0096.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time Per Response: 160 hours.

Total Burden Hours: 160.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Prior to ignition of underground retorts, mine operators must submit a written plan containing site-specific safeguards and safety procedures for the underground areas of the mine affected by the retorts. MSHA uses this information to ensure that safe practices are followed, and to determine that the procedures and safeguards used

protect the safety of all persons in the mine during ignition and operation of a retort.

Agency: Mine Safety and Health Administration (MSHA).

Title: Product Testing by Applicant or Third Party.

Type of Review: Extension.

OMB Number: 1219–0100.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 244.

Number of Annual Responses: 307.

Estimated Time Per Response: 4 hours (weighted average).

Total Burden Hours: 565.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $42,243.

Description: To prevent fire and explosion hazards in underground mines, manufacturers of certain products are required to submit to MSHA applications for product approval. Certain records and reports are required to assure continued product quality.

Agency: Mine Safety and Health Administration (MSHA).

Title: Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

Type of Review: Extension.

OMB Number: 1219–0121.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,203.

Number of Annual Responses: 8,616.

Estimated Time Per Response: 3 minutes.

Total Burden Hours: 431.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Mine operators are required to obtain certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with applicable American Society for Testing and Materials (ASTM) specifications and make the certification available to an authorized representative of the Secretary.

Agency: Employment and Training Administration (ETA).

Title: Employment Service Reporting System.

Type of Review: Revision of a currently approved collection.

OMB Number: 1205–0240.

Affected Public: State, Local, or Tribal Government.

ETA form	Total respondents	Frequency	Total responses	Average minutes per response	Estimated total burden hours
Uses Report 9002A–C	54	Quarterly	216	840	3,024
VETS 200A	54	Quarterly	216	50	180
VETS 200B	54	Quarterly	216	50	180
VETS 300	54	Quarterly	216	60	216
Management Report	1,600	Quarterly	6,400	50	5,333
Totals	1,654		7,264	210	8,933

Total annualized capital/startup costs: $16,000.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Employment Service Program Reporting System will provide data on State public employment service agency program activity and expenditures for use at the Federal level by the U.S. Employment Service and the Veterans' Employment and Training Service in program administration and to provide reports to the Congress, state and local elected officials, and the general public.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–17234 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–43–M

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 supersedes 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.

Modifications to General Wage Determination Decisions

The number of decisions listed in 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

Connecticut:
CT000001 (Feb. 11, 2000)
CT000002 (Feb. 11, 2000)
CT000003 (Feb. 11, 2000)
CT000004 (Feb. 11, 2000)
CT000005 (Feb. 11, 2000)
Massachusetts:
MA000001 (Feb. 11, 2000)
MA000002 (Feb. 11, 2000)
MA000007 (Feb. 11, 2000)
MA000018 (Feb. 11, 2000)
New Hampshire:
NH000001 (Feb. 11, 2000)
NH000002 (Feb. 11, 2000)
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New Jersey:
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NY000078 (Feb. 11, 2000)
NY000079 (Feb. 11, 2000)
Vermont
VT000013 (Feb. 11, 2000)

Volume II

District of Columbia:
DC000001 (Feb. 11, 2000)
DC000003 (Feb. 11, 2000)
Maryland:
MD000001 (Feb. 11, 2000)
MD000009 (Feb. 11, 2000)
MD000011 (Feb. 11, 2000)
MD000012 (Feb. 11, 2000)
MD000021 (Feb. 11, 2000)
MD000035 (Feb. 11, 2000)
MD000037 (Feb. 11, 2000)
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Pennsylvania:
PA000002 (Feb. 11, 2000)
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PA000018 (Feb. 11, 2000)
PA000020 (Feb. 11, 2000)
PA000038 (Feb. 11, 2000)
PA000042 (Feb. 11, 2000)
Virginia:
VA000025 (Feb. 11, 2000)
VA000078 (Feb. 11, 2000)
VA000079 (Feb. 11, 2000)

Volume III

Florida:
FL000009 (Feb. 11, 2000)
FL000013 (Feb. 11, 2000)
FL000015 (Feb. 11, 2000)
FL000017 (Feb. 11, 2000)
FL000049 (Feb. 11, 2000)
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Georgia:
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Kentucky:
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KY000029 (Feb. 11, 2000)
KY000035 (Feb. 11, 2000)

Volume IV

Illinois:
IL000001 (Feb. 11, 2000)
IL000002 (Feb. 11, 2000)
IL000003 (Feb. 11, 2000)
IL000006 (Feb. 11, 2000)
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Ohio:
OH000001 (Feb. 11, 2000)
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OH000036 (Feb. 11, 2000)
Wisconsin:
WI000001 (Feb. 11, 2000)
WI000004 (Feb. 11, 2000)
WI000005 (Feb. 11, 2000)
WI000009 (Feb. 11, 2000)

Volume V

Iowa:
IA000002 (Feb. 11, 2000)
IA000004 (Feb. 11, 2000)
IA000016 (Feb. 11, 2000)
Kansas:
KS000007 (Feb. 11, 2000)
KS000008 (Feb. 11, 2000)
KS000009 (Feb. 11, 2000)
KS000012 (Feb. 11, 2000)
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Nebraska:
NE000003 (Feb. 11, 2000)
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NE000009 (Feb. 11, 2000)
NE000010 (Feb. 11, 2000)
NE000011 (Feb. 11, 2000)
Texas:
TX000007 (Feb. 11, 2000)
TX000018 (Feb. 11, 2000)
TX000033 (Feb. 11, 2000)
TX000034 (Feb. 11, 2000)
TX000037 (Feb. 11, 2000)
TX000060 (Feb. 11, 2000)

Volume VI

Alaska:
AK000001 (Feb. 11, 2000)
AK000002 (Feb. 11, 2000)
AK000006 (Feb. 11, 2000)
Idaho:
ID000001 (Feb. 11, 2000)
ID000002 (Feb. 11, 2000)
North Dakota:
ND000004 (Feb. 11, 2000)
ND000034 (Feb. 11, 2000)
Oregon:
OR000001 (Feb. 11, 2000)
OR000004 (Feb. 11, 2000)
OR000017 (Feb. 11, 2000)
Washington:
WA000001 (Feb. 11, 2000)
WA000002 (Feb. 11, 2000)
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WA000007 (Feb. 11, 2000)
WA000008 (Feb. 11, 2000)
WA000011 (Feb. 11, 2000)
WA000023 (Feb. 11, 2000)

Volume VII

Hawaii:
HI000001 (Feb. 11, 2000)

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.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

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Signed at Washington, D.C. This 29th Day of June 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–17022 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0176 (2000)]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; 29 CFR Part 1904 Recording and Reporting Occupational Injuries and Illnesses (1218–0176)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. The Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the current paperwork requirements of 29 CPR part 1904, Recording and Reporting Occupational Injuries and Illnesses (less 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents). The Agency is in the process of revising these recordkeeping requirements and expects to implement a revised injury and illness recordkeeping system. If the Agency is unable to implement the revised system in January, 2001, it will need to continue the current injury and

illness recordkeeping system. For this reason, OSHA will request OMB reauthorization of the existing Part 1904 under the PRA, and is asking for public comment on burden estimates, practical utility, and other paperwork issues concerning OSHA's existing recordkeeping requirements.

DATES: Written comments must be submitted on or before September 5, 2000. Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 1218–0176 (2000), U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–2350. Written comments limited to 10 pages or less in length may be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistics, Directorate of Information Technology, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–1886. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Todd Owen at (202) 693–2444. For electronic copies of this information collection request, contact OSHA's Web Page on the Internet at http://www.osha-slc.gov/OCIS/Info_coll.html.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act (OSH Act) and 29 CFR part 1904 prescribe that certain employers maintain records of job related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention activities to provide workers a safe and healthy work environment. The data are also needed by the Bureau of Labor Statistics to report on the number and rate of occupational injuries and illnesses in the country.

The data also provide to employers and employees information about the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, employees who are provided information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. Such increased awareness would generally raise the overall level of safety and health in the workplace.

OSHA currently has approval from the Office of Management and Budget (OMB) for information collection requirements contained in 29 CFR part 1904. That approval will expire on December 31, 2000, unless OSHA applies for an extension of the OMB approval. This notice initiates the process of OSHA to request an extension of the current OMB approval. This notice also solicits public comment on OSHA's existing paperwork burden estimates from those interested parties and seeks public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's estimates, which are based upon the most current data available, and to comment on their accuracy or appropriateness in today's workplace situation.

29 CFR 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents (OMB control number 1218–0007) is under a separate Information Collection Request (ICR) package.

II. Current Actions

This notice request public comment on an extension of the current OMB approval of the paperwork requirements in 28 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses.

Type of Review: Extension of currently approved collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Recording and Reporting Occupational Injuries and Illnesses.

OMB Number: 1218–0176.

Agency Number: ICR 1218–0176 (2000).

Frequency: Recordkeeping.

Affected Public: Business or other for-profit; Farms; Not-for-profit institutions; State and Local Government.

Cite/Reference/Form/etc: 29 CFR part 1904; OSHA No. 200; OSHA No. 101.

Number of Respondents: 1,395,516.

Estimated Time Per Respondent: 1,395,516.

Total Burden Hours: 2,070,008 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: July 3, 2000.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 00–17266 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–12]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of approval.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces that the Office of Management and Budget (OMB) approved the Information Collection Request for the Hazard Communication Standard under the Paperwork Reduction Act of 1995. This document provides the OMB approval number and expiration date for this action.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 693–2444.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 11, 1999 (64 FR 43737), the Agency announced its request to OMB to renew its current approval for 29 CFR 1910.1200; 29 CFR 1915.1200, 29 CFR 1917.28, CFR 1918.90, 29 CFR 1926.1200, and 29 CFR 1928.21 the Hazard Communication Standard for the general, shipyard

employment, marine-terminal, longshoring, construction, and agriculture industries. Consistent with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB renewed its approval of the Information Collection Request for this Standard (OMB Control Number 1218–0072). This approval expires February 28, 2002. Under 5 CFR 1320.5(b), and Agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid control number.

Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC on June 30, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–17263 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0085 (2000)]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of approval.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces that the Office of Management and Budget (OMB) approved the Information Collection Request for the 13 Carcinogens Standard under the Paperwork Reduction Act of 1995. This document provides the OMB approval number and expiration date for this action.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 693—2444.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 10, 1999 (64 FR 61369), the Agency announced its request to OMB to renew its current approval for 29 CFR 1910.1003, 29 CFR 1915.1003, and 29 CFR 1926.1103, the 13 Carcinogens Standard for the general, shipyard-employment, and construction industries, respectively. Consistent with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB renewed its approval of the Information Collection Request for this Standard (OMB Control Number 1218–0085). This approval expires March 31, 2003. Under 5 CFR 1320.5(b), an Agency cannot conduct, sponsor, or require a person to respond to a collection of information unless the collection displays a valid control number.

Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC on June 30, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor

[FR Doc. 00–17264 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0128 (2000)]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of approval.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces that the Office of Management and Budget (OMB) approved the Information Collection Request for the Coke Oven Emissions Standard under the Paperwork Reduction Act of 1995. This document provides the OMB approval number and expiration date for this action.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 693–2444.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 25, 2000 (65 FR 3977), the Agency announced its request to OMB to renew its current approval for 29 CFR 1910. 1029, the Coke Oven Emissions Standard. Consistent with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB renewed its approval of the Information Collection Request for this Standard (OMB Control Number 1218–0128). This approval expires May 31, 2003. Under 5 CFR 1320.5(b), an Agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid control number.

Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC on July 3, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–17265 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317, 50–318, 72–8; Renewed License No. DPR–53; Renewed License No. DPR–69; and License No. SNM–2505]

In the Matter of Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and Calvert Cliffs Independent Spent Fuel Storage Installation; Order Approving Transfer of Licenses and Conforming Amendments

I

Baltimore Gas and Electric Company (BGE or the licensee) is the holder of Renewed Facility Operating Licenses Nos. DPR–53 and DPR–69, which authorize operation of Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (CCNPP or Calvert Cliffs), and Materials License No. SNM–2505, which authorizes operation of the Calvert Cliffs Independent Spent Fuel Storage Installation (Calvert Cliffs ISFSI). The facilities are located at the licensee's site in Calvert County, Maryland. The operating licenses authorize BGE to possess, use, and operate Calvert Cliffs. The materials license authorizes BGE to receive, possess, transfer and store power reactor spent fuel at the Calvert Cliffs ISFSI.

II

By application dated February 29, 2000, as supplemented April 7, April 27, May 2, May 19, and June 20, 2000 (collectively, the application), BGE

requested that the Commission consent to certain proposed license transfers that would be necessary in connection with the corporate restructuring of BGE in accordance with Maryland's Electric Customer Choice and Competition Act of 1999. Under this restructuring, Constellation Energy Group, Inc. (''Constellation Energy''), the parent of BGE, has formed a wholly owned subsidiary, Constellation Nuclear Group, LLC (''CN''). BGE proposes to transfer ownership of and the licenses for CCNPP and the ISFSI to a subsidiary of BGE, Calvert Cliffs Nuclear Power Plant, Inc. (''Company''). BGE will then transfer the ownership of Company to Constellation Energy, which in turn will transfer the ownership of Company to CN. The result will be that CN, as owned by Constellation Energy will own Company, which will be the owner and licensee of CCNPP and the ISFSI. No physical changes to the facilities or operational changes were proposed in the application.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by BGE pursuant to 10 CFR 50.80 and 50.90, and approval of the transfer of the materials license and conforming amendment was requested by BGE pursuant to 10 CFR 72.50 and 72.56. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on May 4, 2000 (65 FR 25963). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. In addition, pursuant to 10 CFR 72.50, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. After reviewing the information in the application from BGE and other information before the Commission and relying upon the representations and agreements contained in the application, the NRC staff has determined that Company is qualified to be the holder of the licenses and that the transfer of the licenses to Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that (1) The application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; (2) the facilities will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; (3) there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; (4) the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and (5) the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated June 30, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the transfer of the licenses, as described herein, to Company is approved, subject to the following conditions:

(1) Company shall, prior to completion of the subject transfers, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Company has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) If the transfer of the licenses is not completed by July 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(3) The decommissioning trust agreement for Calvert Cliffs and the ISFSI, at the time the license transfers are effected and thereafter, is subject to the following:

(a) The decommissioning trust agreement must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Constellation Energy or its affiliates, successors, or assigns shall be prohibited. Except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreement must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the NRC 30-days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(d) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30-days prior written notification to the Director, Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a ''prudent investor'' standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Company shall provide decommissioning funding assurance, to be held in decommissioning trusts for Calvert Cliffs upon the transfer of the licenses to Company, in an amount equal to or greater than the balance in the Calvert Cliffs decommissioning trusts immediately prior to the transfer. In addition, Company shall ensure that all contractual arrangements referred to in the application to obtain necessary decommissioning funds for Calvert Cliffs through a non-bypassable charge are executed and will be maintained until the decommissioning trusts are fully funded, or shall ensure that other mechanisms that provide equivalent assurance of decommissioning funding in accordance with the Commission's regulations are maintained.

(5) Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application, the requirements of this Order, and the related safety evaluation.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued with this Order and shall be made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated February 29, 2000, supplements dated

April 7, April 27, May 2, May 19, and June 20, 2000, and the safety evaluation dated June 30, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 30th day of June, 2000.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17206 Filed 7–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of 10 CFR 140.11 regarding financial protection requirements for Facility Operating License No. DPR–21, issued to Northeast Nuclear Energy Company (the licensee), for the Millstone Nuclear Power Station, Unit 1, a permanently shutdown nuclear reactor facility located in Waterford, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow an exemption from the requirements of 10 CFR 140.11(a)(4) regarding secondary financial protection, due to the permanently shutdown and defueled status of the Millstone Nuclear Power Station, Unit 1.

The proposed action is in accordance with the licensee's application for exemption dated September 28, 1999, as supplemented by letter dated March 2, 2000.

The Need for the Proposed Action

The proposed action is needed because the licensee's required insurance coverage significantly exceeds the potential cost consequences of radiological incidents possible at a permanently shutdown and defueled nuclear power plant with spent fuel that will have cooled since the plant ceased operations on November 4, 1995.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that exemption from 10 CFR 140.11(a)(4) is an administrative action and will not have any environmental impact. Millstone Nuclear Power Station, Unit 1 permanently ceased operations on November 4, 1995, and completed the transfer of all reactor fuel to the spent fuel pool shortly afterwards. The licensee maintains and operates the unit in a configuration necessary to support the safe storage of spent fuel and to comply with the facility operating license and NRC's rules and regulations.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit 1.

Agencies and Persons Contacted

In accordance with its stated policy, on June 2, 2000, the staff consulted with the State of Connecticut official, Mr. Michael Firsick of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 28, 1999, as supplemented by letter dated March 2, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http:www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 29th day of June 2000.

For the Nuclear Regulatory Commission.

David J. Wrona,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17205 Filed 7–6–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24548; 812–10706]

Van Kampen Funds Inc. and Van Kampen Focus Portfolios; Notice of Application

June 29, 2000.

AGENCY: Securities and Exchange Commission ''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A), (B) and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered unit investment trusts to acquire shares of registered management investment companies and unit investment trusts both within and outside the same group of investment companies.

FILING DATES: The application was filed on June 17, 1997, and amended on April 12, 2000, and May 22, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 24, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, One Parkview Plaza, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Branch Chief, and Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102, (202) 942–8090.

Applicants' Representations

1. The Van Kampen Focus Portfolios (''Trust'') and its series (''Trust Series'') are unit investment trusts registered under the Act and sponsored by Van Kampen Funds Inc. (''Sponsor''). The Sponsor, a Delaware corporation, is an indirect subsidiary of Morgan Stanley Dean Witter & Co.

2. Applicants request relief to permit the Trust Series to invest in (a) registered investment companies that are part of the same ''group of investment companies'' (as that term is defined in section 12(d)(1)(G) of the Act) as the Trust (''Affiliated Funds''), and (b) registered investment companies that are not part of the same group of investment companies as the Trust (''Unaffiliated Funds,'' together with the Affiliated Funds, the ''Funds''). The Unaffiliated Funds may include unit investment trusts (''Unaffiliated Underlying Trusts'') and open-end or closed-end management investment companies (''Unaffiliated Underlying Funds''). Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be ''exchanged-traded funds'' that are registered under the Act as unit investment trusts or open-end management investment companies and have received exemptive relief to sell their shares on a securities exchange at negotiated prices. Applicants request that the relief also apply to future Trust Series and unit investment trusts registered under the Act and sponsored by the Sponsor that invest in the Funds. [1]

3. Applicants state that the requested relief will benefit unitholders by providing investors with a professionally selected, diversified portfolio of investment company shares through a single investment vehicle.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or unit investment trust acquired by a registered unit investment trust if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that they may not rely on section 12(d)(1)(G) because a Trust Series will invest in Unaffiliated Funds in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Trust Series to acquire shares of a Fund and to permit a Fund to sell shares to a Trust Series beyond the limits set forth in section 12(d)(1)(A), (B), and (C).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying section 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund or funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants state that the proposed arrangement will not result in undue influence by a Trust Series or its affiliates over Funds. To limit the control that a Trust Series may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Sponsors, the Trust Series, and certain affiliate (individually or in the aggregate) from controlling an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over Unaffiliated Funds, applicants propose conditions 2 through 6, stated below, to preclude a Trust Series and its affiliated entities from taking advantage of an Unaffiliated Fund with respect to transactions between the entities and to ensure that transactions will be on an arm's length basis.

6. As an additional assurance that an Unaffiliated Fund understands the implications of an investment by a Trust Series under the requested order, a Trust Series and Unaffiliated Fund will execute an agreement prior to the investment stating that the Unaffiliated Fund understands the terms and conditions of the order and agrees to fulfill its responsibilities under the order. Applicants note that an Unaffiliated Fund may choose to reject an investment from the Trust Series.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that a condition to the order would provide that the aggregate sales charges, distribution-related fees and/or service

[1] All investment companies that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application.

fees of a Trust Series and any Fund in which it invests will not exceed the limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rules''). In addition, the trustee to a Trust Series (''Trustee'') will waive or offset fees otherwise payable by the Trust Series in an amount at least equal to any compensation (including fees paid pursuant to a plan adopted by an Unaffiliated Underlying Fund under rule 12b–1 under the Act (''12b–1 Fees'')) received by the Sponsor or Trustee, or an affiliated person of the sponsor or Trustee, from an Unaffiliated Fund in connection with the investment by a Trust Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that a Trust Series' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 55% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Trust Series and Affiliated Funds might be deemed to be under the common control of the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor. Applicants also state that a Trust Series and a Fund might become affiliated persons if the Trust Series acquires more than 5% of the Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent a Fund from selling shares to and redeeming shares from a Trust Series.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(a) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Funds will be based on the net asset values of the Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Trust Series, as set forth in each Trust Series' registration statement, and with the general purposes of the Act.

Applicant's Conditions

Applicants agree that the requested order will be subjected to the following conditions:

1. (a) The Sponsor, (b) any person controlling, controlled by, or under common control with the Sponsor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act sponsored or advised by the Sponsor or any person controlling, controlled by, or under common control with the Sponsor (collectively, the ''Group'') will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. A Trust Series and its Sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a ''Trust Series Affiliate'') will not cause any existing or potential investment by the Trust Series in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Trust Series or a Trust Series Affiliate and the Unaffiliated Fund or its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities.

3. Once an investment by a Trust Series in the securities of an Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, the board of directors of the Unaffiliated Underlying Fund, including a majority of the disinterested directors, will determine that any consideration paid by the Unaffiliated Underlying Fund to a Trust Series or a Trust Series Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

4. No Trust Series or Trust Series Affiliate will cause an Underlying Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is the Sponsor or a person of which the Sponsor is an affiliated person (each an ''Underwriting Affiliate''). An offering during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an ''Affiliated Underwriting.''

5. The board of directors of an Unaffiliated Underlying Fund, including a majority of the disinterested directors, will adopt procedures reasonably designed to monitor any purchases by the Unaffiliated Underlying Fund of securities in Affiliated Underwritings once an investment by a Trust Series in the securities of the Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of directors will review these purchases periodically, but no less frequently than

annually, to determine whether the purchases were influenced by the investment by the Trust Series in shares of the Unaffiliated Underlying Fund. The board of directors will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from Underwriting Affiliates have changed significantly from prior years. The board of directors shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

6. An Unaffiliated Underlying Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period not less than 6 years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first 2 years in an easily accessible place, a written record of each purchase made once an investment by a Trust Series in the securities of an Unaffiliated Underlying Fund exceeded the limits of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

7. Prior to an investment in an Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Trust Series and the Underlying Fund will execute an agreement stating, without limitation, that the Underlying Fund understands the terms and conditions of the order and agrees to fulfill its responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a Trust Series will notify the Unaffiliated Fund of the investment. At such time, the Trust Series also will transmit to the Unaffiliated Fund a list of the names of each Trust Series Affiliate and Underwriting Affiliate. The Trust Series will notify the Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Underlying Fund and the Trust Series will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period not less than 6 years from the end of the fiscal year in which any investment occurred, the first 2 years in an easily accessible place.

8. The Trustee will waive or offset fees otherwise payable by a Trust Series in an amount at least equal to any compensation (including 12b–1 Fees) received by the Sponsor or Trustee, or an affiliated person of the Sponsor or Trustee, from an Unaffiliated Fund in connection with the investment by a Trust Series in the Unaffiliated Fund.

9. Any sales charges, distribution-related fees and/or service fees charged with respect to units of a Trust Series, when aggregated with any sales charges, distribution-related fees and/or service fees paid by the Trust Series with respect to its acquisition, holding, or disposition of shares of a Fund, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17143 Filed 7–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42988; File No. SR–BSE–00–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. Relating to Index Fund Shares

June 28, 2000.

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 9, 2000, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on June 12, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve 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 proposes to adopt listing standards and trading rules for Index Fund Shares, including generic listing standards which would permit the Exchange to trade, either by listing or pursuant to unlisted trading privileges (''UTP''), series of Index Fund Shares pursuant to Rule 19b–4(e) under the Act.[4] Once these listing standards are approved, the Exchange intends to trade SPDRs and iShares MSCI[5] pursuant to unlisted trading privileges. Below is the text of the proposed rule change. New language is *italicized.*

* * * * *

Chapter XIV–B

Index Fund Shares

Applicability

Section 1. (a) This Chapter is applicable only to Index Fund Shares. Except to the extent inconsistent with this Chapter, or unless the context context otherwise requires, the provisions of the Constitution and all other rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Constitution and Rules of the Exchange.

Definitions

Section 2. The following terms shall have the meanings specified herein:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which has been incorporated into the proposed rule change, the Exchange made certain typographical corrections, modified several aspects of the proposed rule text, and replaced references to ''World Equity Benchmark Shares'' (''WEBS'') with references to ''Morgan Stanley Capital International Index Funds'' (''iShares MSCI Index Funds'' or ''iShares MSCI''). *See* Letter from Esher M. Radovsky, Listings Analyst, BSE, to Andrew Shipe, Attorney, Division of Market Regulation (''Division''), SEC, dated June 9, 2000 (''Amendment No. 1'').

[4] 15 U.S.C. 78s(b).

[5] The BSE represents that the American Stock Exchange LLC (''AMEX'') has renamed all Index Shares based in individual foreign countries from ''World Equity Benchmark Shares'' to ''Morgan Stanley Capital International Index Funds'' (''iShares MSCI Index Funds'' or ''iShares MSCI''). This proposal extends only to those iShares MSCI that were formerly termed ''WEBs.'' The BSE represents that there has been no substantive change to this product. *See* Amendment No. 1, *supra,* note 3.

(a) *The term ''Index Fund Share'' means a security (i) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.*

(b) *The term ''Reporting Authority'' with respect to a particular series of Index Fund Shares means the Exchange, or an institution or reporting service designated by the Exchange, as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading or Index Fund Shares. Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange, the term ''Reporting Authority'' shall not refer to an institution or reporting service not so designated.*

Disclosure

Section 3. The Exchange requires that members and member organizations provide to all purchasers of newly issued Index Fund Shares a prospectus for the series of Index Fund Shares.

Designation

Section 4. The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares shall be based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person, as shall have authorized use of such index. Such index may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index.

Initial and Continued Listing and/or Trading

Section 5. Each series of Index Fund Shares will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading. For each Series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading. Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances:

(i) If there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days;

(ii) If the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or

(iii) If such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of an open-end management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange Listing.

(c) Voting. Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

** * * Interpretation and Policies:*

.01 The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million;

(ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(iii) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv) The underlying index or portfolio must include minimum of 13 stocks; and

(v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initital Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

(e) Minimal Fractional Trading Variation. The minimum fractional trading variation may vary among different series of Index Fund Shares but will be set at 1/16th, 1/32nd or 1/64th of $1.00.

(f) Hours of Trading. Trading will occur between 9:30 a.m. and either 4:00

p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(h) Applicability of Other Rules. The provisions of Chapter XXIV–B et seq. will apply to all series of Index Fund Shares.

02. The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform members and member organizations regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series.

The Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from [6] your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares].''

A member of member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

.03 The Exchange will trade, pursuant to unlisted trading privileges, Index Fund Shares of Select Sector SPDR Funds, which are known as ''Select Sector SPDRs.''

.04 The Exchange will trade, pursuant to unlisted trading privileges, Index Fund Shares based on Morgan Stanley Capital International (MSCI) Index Funds, which are known as ''iShares MSCI.''

.05 The minimum fractional trading variation will be 1/16th of $1.00 for iShares MSCI and 1/64th of $1.00 for Select Section SPDRs.

* * * * *

Chapter XV

Specialists

Section 11. Restrictions on Transactions by Specialist

* * *Interpretation and Policies:

.01 Specialists may only redeem and create Index Fund Shares on the same terms and conditions as any other investor and only at the net asset value (''NAV'').

.02 Nothing in Section 11 shall be deemed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issues as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

* * * * *

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 statement 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

a. Listing Requirements for Index Fund Shares

The Exchange proposes to adopt new listing and delisting requirements to accommodate the trading of Index Fund Shares, *i.e.,* securities issued by an open-end management investment company (''Fund'') that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index (''Index Fund Shares'' or ''Fund Shares''). Once the listing standards for Index Funds Shares are approved, the Exchange intends to trade Select Sector SPDRs and iShares MSCI [7] pursuant to UTP.

Index Fund Shares will be issued by an entity registered with the Commission as an open-end management investment company, and which may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index. Issuances of Index Fund Shares by a Fund will be made only in minimum size aggregations or multiples thereof (''Creation Units''). The size of the applicable Creation Unit size aggregation will be set forth in the Fund's prospectus, and will vary from one series of Index Fund Shares to another, but generally will be of substantial size (*e.g.*, value in excess of $450,000 per Creation Unit). It is expected that a Fund will issue and sell Index Fund Shares through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Index Fund Shares in Creation Unit size aggregations is received in proper form. Index Fund Shares will be traded on the Exchange like other equity securities, and Exchange equity trading rules will apply to the trading of Index Fund Shares.

The Exchange expects that Creation Unit size aggregations of Index Fund Shares generally will be issued in exchange for the ''in kind'' deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. The Exchange anticipates that such deposits will be made primarily by institutional investors, arbitragers, and the Exchange

[6] The Exchange changed the word ''for'' to ''from'' in the proposed rule text. Telephone conversation between Esther M. Radovsky, Listings Analyst, BSE, and Heather Traeger and Andrew Shipe, Attorneys, Division, SEC, on June 28, 2000.

[7] *See supra* note 5.

specialist. Redemption of Index Fund Shares generally will be made ''in kind'', with a portfolio of securities and cash exchanged for Index Fund Shares that have been tendered for redemption. Issuances or redemptions also could occur for cash under specified circumstances (*e.g.*, if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times in the discretion of the Fund.

The Exchange expects that a Fund will make available on a daily basis a list of the names and the required number of shares of each of the securities to be deposited in connection with issuance of Index Fund Shares of a particular series in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

A Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net expenses and liabilities for such period.

Index Fund Shares will be registered in book entry form through the Depository Trust Company. Trading in Index Fund Shares on the Exchange may be effected until either 4 p.m. or 4:15 p.m. (New York time) each business day.

Criteria for Initial and Continued Listing

The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the listing standards for ''Hybrid Securities'', currently found in Chapter XXVII of the Exchange Rules, as well as the Index Fund Shares listing criteria currently used by the Amex.[8]

Initial Listing. If Index Fund Shares are to be listed on the Exchange, the Exchange will establish a minimum number of Index Fund Shares that must be outstanding at commencement of Exchange trading, and such minimum number will be included in any required submission under Rule 19b–4.

Continued Listing. In connection with continued listing, the Exchange will consider the suspension of trading in, or removal from listing of, an Index upon which a series of Index Fund Shares is based when any of the following circumstances arise: (1) There are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (3) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange will not, however, be required to suspend or delist from trading, based on the above factors, any Index Fund Shares for a period of one year after the initial listing of such Index Fund Shares for trading on the Exchange. The Exchange will require that Index Fund Shares be removed from listing upon termination of the Fund that issued such shares.

b. Standards to Permit Trading, Either by Listing or Pursuant to UTP, of Index Fund Shares Pursuant to Rule 19b–4(e) under the Act

The Exchange proposed to adopt generic listing and delisting standards to permit the trading, either by listing or pursuant to UTP, of Index Fund Shares pursuant to Rule 19b–4(e) under the Act.[9] Rule 19b–4(e) permits self-regulatory organizations (''SROs'') to list and trade new derivative products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). Accordingly, the Exchange proposes to approve a series of Index Fund Shares for listing or trading, either by listing or pursuant to UTP, pursuant to Rule 19b–4(e) under the following criteria.

Upon the initial listing of a series of Index Fund Shares, component stocks that in the aggregate account for at least 90% of the weight of the underlying index or portfolio must have a minimum market value of at least $75 million. In addition, the component stocks representing at least 90% of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. Moreover, the most heavily weighted component stocks in an underlying index or portfolio cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks.[10] All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market). Finally, any series of Index Fund Shares must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund.

The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer.

The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading. Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange. The provisions of BSE Chapter XXIV–B *et seq.,* will apply to all series of Index Fund Shares.

c. Exchange Rules Applicable to the Trading of Index Fund Shares

Index Fund Shares are considered ''securities'' under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of BSE Chapter XXXI, Section 4, Trade-Throughs and Locked Markets, which prohibit Exchange members from initiating trade-throughs for Intermarket Trading System securities, as well as rules governing priority, parity and precedence of

[8] The Amex's listing criteria were approved by the Commission on March 8, 1996. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[9] 17 CFR 240.19b–4(e).

[10] Thirteen stocks is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code. Under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company, the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of such fund's total assets.

orders, market volatility-related trading halt provisions and responsibilities of the assigned specialist firm.[11] Exchange equity margin rules will apply.

The Exchange also intends to utilize its existing surveillance procedures, including procedures adopted for portfolio depositary receipts, to surveil trading in Index Fund Shares. The Exchange will also surveil specialist compliance with BSE Chapter XV, Section 11, ''Restrictions on Transactions by Specialist,'' and proposed interpretation and policies .01 and .02 to Chapter XV, Section 11, which contemplate specialists engaging in transactions with the issuer of Index Fund Shares under certain circumstances.

d. Notice to Members

Prior to the commencement of trading in Index Fund Shares, the Exchange will issue a circular to members highlighting the characteristics of purchases in Index Fund shares. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other issues, will discuss what Index Fund Shares are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing Index Fund Shares prior to or concurrently with the confirmation of a transaction, applicable Exchange Rules, dissemination information, trading information, and the applicability of suitability rules.

In addition, the circular will inform members of Exchange policies about trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in BSE Chapter II, Section 34B have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as the extent to which trading is not occurring in a deposited security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

e. Disclosure

The Exchange will require its members to provide all purchasers of newly issued Index Fund Shares with a Fund prospectus. Because the Units will be in continuous distribution, the prospectus delivery requirements of Section 5(b)(2) of the Securities Act of 1933 (the ''1933 Act'')[12] will apply to all investors in Index Fund Shares, including secondary market purchases on the Exchange in Index Fund Shares.

With respect to series of Index Fund Shares that are the subject of an order by the SEC exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''1940 Act''),[13] the Exchange will inform members and member organizations regarding disclosure obligations with respect to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series.

For these exempted series, the Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares].''

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

f. Minimum Fractional Change

The Index Fund Shares are currently traded on the Amex at a minimum of variation of 1/16th or 1/64th of $1.00. The Exchange proposes the minimum fractional change for Index Fund Shares on the Exchange will be 1/16th, 1/32nd or 1/64th of $1.00 depending on the series of Index Fund Shares. Thus, the Exchange is proposing the same minimum fractional increments for the trading of Index Fund Shares on the BSE, until such time as decimal increments are approved. It is anticipated that some time after August, 2000, the industry minimum-price variations will be converted from fractions to decimals.

g. Description of iShares MSCI and Select Sector SPDRs

Seventeen series of iShares MSCI based on Morgan Stanley Capital International foreign stock indices.[14] and nine investment series of Select SPDRs offered by the Select Sector SPDR Trust are traded on the Amex.[15] The Exchange is not seeking approval to list these iShares MSCI[16] or Select Sector SPDRs[17] at this time, but rather is requesting approval to trade these iShares MSCI and Select Sector SPDRs pursuant to UTP once these listing standards are approved.

Pursuant to Rule 12f–5 under the Act,[18] to trade a particular class or type of security pursuant to UTP, the Exchange must have rules providing for transactions in such class or type of security. The Amex has enacted listing

[11] BSE Chapter VII, Section 2, will also apply to the trading of Index Fund Shares. That rule provides, in part, that every member and allied-member is required to use due diligence to learn the essential facts relative to every customer, including the possible use of a name other than that of the interested party, and to every order or account accepted by him, except when acting as agent for another member.

[12] 15 U.S.C. 77e(b)(2).

[13] 15 U.S.C. 80a–24(d).

[14] *See supra* note 5.

[15] Further information regarding Select Sector SPDRs and iShares MSCI is available at the principal office of the Exchange, and at the Commission's Public Reference Room, as detailed in III, below.

[16] Specifically, the MSCI Australia, MSCI Austria, MSCI Belgium, MSCI Canada, MSCI France, MSCI Germany, MSCI Hong Kong, MSCI Italy, MSCI Japan, MSCI Malaysia, MSCI Mexico, MSCI Netherlands, MSCI Singapore, MSCI Spain, MSCI Sweden, MSCI Switzerland, and MSCI United Kingdom Indices.

[17] Specifically, the Basic Industries Select Sector SPDR, the Consumer Services Select Sector SPDR, the Consumer Staples Select Sector SPDR, the Cyclical/Transportation Select Sector SPDR, the Energy Select Sector SPDR, the Financial Select Sector SPDR, the Industrial Select Sector SPDR, the Technology Select Sector SPDR and The Utilities Select Sector SPDR.

[18] 17 CFR 240.12f–5.

standards for Index Fund Shares, and the BSE's proposed rule change is designed to create similar standards for Index Fund Shares listing and/or trading on the BSE. As stated above, the Exchange proposes to only trade iShares MSCI and Select Sector SPDRs pursuant to UTP upon approval of this rule filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[19] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, 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.

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

No written comments were either 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–00–05 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[20] Specifically, the Commission finds that the BSE's proposal to establish generic standards to permit the trading of Index Fund Shares pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act. Thus, by establishing generic standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[21]

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[22] The Commission's approval of the proposed generic listing standards for Index Fund Shares will allow those series of Index Fund Shares that satisfy those standards to start trading under Rule 19b–4(e), without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for brining these securities to the market and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that Index Fund Shares and like products that it approved for trading under similar rules on other Exchanges would allow investors to: (1) respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities.[23] The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed standards for Index Fund Shares should produce the same benefits to the BSE and to investors.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the trading of Index Fund Shares under Rule 19b–4(e). All series of Index Fund Shares listed under the proposed standards will be subject to the full panoply of BSE rules and procedures that now govern the trading of existing securities on the BSE.[24] Accordingly, any new series of Index Fund Shares listed and traded on the Exchange, or pursuant to UTP, will be subject to BSE rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, and margin. These criteria allow the BSE to consider the suspension of trading and the delisting of a series if an event occurred that made further dealings in such securities inadvisable. This will give the

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[23] *See* Securities Exchange Act Release No. 42975 (June 22, 2000); Securities Exchange Act Release No. 42833 (May 26, 2000), 65 FR 35679 (June 5, 2000); Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000); Securities Exchange Act Release No. 36947) (March 8, 1996), 61 FR 10606 (March 14, 1996).

[24] The Commission notes that although Index Fund Shares are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective Funds. Accordingly, the level of risk involved in the purchase or sale of Index Fund Shares is similar to the risk involved in the purchase or sale of traditional common stock. Nevertheless, the Commission believes there are unique aspects to trading Index Fund Shares, which the Exchange has sufficiently and adequately addressed in this proposal.

BSE flexibility to delist Index Fund Shares if circumstances warrant such action.

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading Index Fund Shares. Members and member organizations will be required to provide to all purchasers of Index Fund Shares a written description of the terms and characteristics of these securities, to include their description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus, when requested by the customer. The proposal also requires a member or member organization carrying an omnibus account for a non-member broker-dealer, to notify the non-member that execution of an order to purchase Index Fund Shares constitutes an agreement by the non-member to provide the product description to its customers.

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any Index Fund Shares, the Exchange will issue a circular to its members explaining the unique characteristics and risk of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and inform members of their responsibilities under BSE Rules in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequate disclosure to investors about the terms and characteristics of a particular series, and is consistent with Section 6(b)(5) of the Act.[25]

In addition, the BSE has developed specific listing criteria for series of Index Fund Shares qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of a series of Index Fund Shares be outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading.

The Commission believes that the proposed generic listing standards ensure that the securities composing the underlying indexes and portfolios are well capitalized and actively traded. These capitalization and liquity criteria serve to prevent fraudulent or manipulative acts, and are therefore consistent with Section 6(b)(5) of the Act.

Furthermore, the Commission finds that the Exchange's proposal to trade Index Fund Shares in increments of 1/16th, 1/32nd, or 1/64th, of $1.00 is consistent with the Act.

The Exchange also represents that the Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which products such as Index Fund Shares are based. The proposed requires that, in such circumstances, the broker dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index, and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

In its proposed generic listing standards, the BSE represents that it will rely upon its existing surveillance procedures for supervision of trading in Index Fund Shares listed or traded pursuant to Rule 19b–4(e). The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading Index Fund Shares, including those listed or traded under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[26] The Commission further notes that the Exchange has represented that it will file Form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) recordkeeping requirements.

The BSE has stated that it intends to trade SPDRs and iShares MSCI[27] pursuant to UTP once this proposal has been approved. The Commission believes that the Exchange's proposal to trade these series to Index Fund Shares could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of SPDRs and iShares MSCI as an investment tool, the BSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

The Commission finds good cause for approving the proposed rule change (SR–BSE–00–05) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the trading requirements of Index Fund Shares at the BSE will be substantially similar to the trading requirements of Index Fund Shares at the Amex, Index Portfolio Shares at the Chicago Board Options Exchange, and Investment Company Units at the Chicago Stock Exchange, which the Commission approved in the past.[28] The Commission also observes that the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to Section 19(b) of the Act.[29] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[30] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–BSE–00–05), as amended, is hereby approved on an accelerated basis.

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(5).

[27] *See supra* note 5.

[28] *See supra* note 5.

[29] 15 U.S.C. 78s(b).

[30] 15 U.S.C. 78f(b)(6).

[31] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17148 Filed 7–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42985; File No. SR–CHX–00–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Execution of Odd-Lot Limit Orders for Nasdaq/NM Securities

June 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on June 9, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 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 Article XXXI, Rule 9 of the Exchange's rules relating to execution of odd-lot limit orders for Nasdaq/NM Securities. The text of the proposed rule change is as follows. New text is *italicized.*

Article XXXI

* * * * *

Rule 9. Execution of Odd-Lot Orders

(a)–(b) No change in text.

(c)(i–iii) No change in text.

(c)(iv) Buy Limit Orders. Buy limit orders *in Dual Trading System issues* shall be executed at the limit price only after there has been a full lot transaction in the primary market at a price at or below the limit price. *A buy limit order in Nasdaq/NM Securities shall be executed at the limit price, on a share-for-share basis, based on the first to occur of (A) a reported full round lot transaction in any marketplace at a price at or below the limit price, or (B) odd lot transactions on the Exchange at a price at or below the limit price, provided however, that (1) if an odd lot or round lot transaction on the Exchange would cause an execution of a portion of the next odd-lot limit order in the specialist's limit order book, the entire next odd-lot limit order shall be executed; (2) an incoming round lot limit order will only cause execution of a ''resting'' round lot order (i.e., a round lot order in the specialist's limit order book) if the size of the incoming limit order is greater than or equal to the size of the resting round lot order plus the aggregate size of any odd lot orders that were executed at the limit price; and (3) if the auto-execution threshold is set at 0, odd lot orders shall continue to execute automatically in accordance with the foregoing but round lot orders shall be treated manually in accordance with Article XX, Rule 43(d).*

(c)(v) Sell Limit Orders, Marked ''Long.'' Sell limit orders in *Dual Trading System issues* marked ''long'' shall be executed at the limit price, only after there has been a full lot transaction in the primary market at a price at or above the limit price. *A sell limit order in Nasdaq/NM Securities marked ''long'' shall be executed at the limit price, on a share-for-share basis, based on the first to occur of (A) a reported full round lot transaction in any marketplace at a price at or above the limit price, or (B) odd lot transactions on the Exchange at a price at or above the limit price, provided, however, that (1) if an odd lot or round lot transaction on the Exchange would cause an execution of a portion of the next odd-lot limit order in the specialist's book, the entire next odd-lot limit order shall be executed; (2) an incoming round lot limit order will only cause execution of a ''resting'' round lot order (i.e., a round lot order in the specialist's limit order book) if the size of the incoming limit order is greater than or equal to the size of the resting round lot order plus the aggregate size of any odd lot orders that were executed at the limit price; and (3) if the auto-execution threshold is set at 0, odd lot orders shall continue to execute automatically in accordance with the foregoing but round lot orders shall be treated manually in accordance with Article XX, Rule 43(d),*

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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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 Exchange proposes to amend Article XXXI, Rule 9 of the Exchange's rules relating to execution of odd-lot limit orders for Nasdaq/NM Securities. The proposed rule change is intended to place the Exchange's rules in line with existing market pattern and practice relating to the trading of Nasdaq/NM Securities, by reflecting certain distinctions between transactions in Nasdaq/NM Securities and transactions in Dual Trading system securities, *i.e.,* listed issues.

Under the Exchange's current version of Article XXXI, Rule 9, which governs execution of odd-lot limit orders, execution of an odd-lot limit order is conditioned on a full round-lot execution in the primary market. Because a primary market trigger is only available in the case of Dual Trading System securities (for which the New York Stock Exchange generally serves as the primary market), the Exchange proposes a rule change providing that in the case of Nasdaq/NM Securities, automatic execution of odd-lot limit orders would be triggered by the first to occur of a reported full round-lot transaction in any marketplace or an odd-lot transaction on the Exchange. The proposed rule change also contemplates that a round-lot limit order in a specialist's book would only be triggered if an incoming order is of sufficient size to ''take out'' the entire resting round lot.

The Exchange believes that the net effect of this rule change will be to dramatically increase the number of odd-lot limit orders for Nasdaq/NM securities that are executed on the Exchange. The Exchange contends that this enhancement will be to the benefit of the Exchange's order-sending firms and their investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[3] of the Act in general and furthers the objectives of Section 6(b)(5) of the Act in particular,[4] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

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 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 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file No. SR–CHX–00–19 and should be submitted by July 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17146 Filed 7–6–00; 8:45 am]

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[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42986; File No. SR–CHX–00–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc. Relating to the Listing and Trading of Trust Issued Receipts

June 28, 2000.

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 5, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 the Exchange. On June 7, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] 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 its listing standards for Trust Issued Receipts (CHX Article XXVIII, Rule 27) to provide standards that permit listing and trading, or trading pursuant to unlisted trading privileges, of Holding company Depositary Receipts (''HOLDRs'')[4] pursuant to Rule 19b–4(e) under the Act.[5] The text of the proposed rule change follows. *Italics* indicate text to be added.

Article XXVIII

Listed Securities

* * * * *

Trust Issued Receipts

Rule 27. No change to Text

** * * Interpretations and Policies*

.01 The Exchange may approve a series of HOLDRs for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934, provided that the following criteria are satisfied:

(a) Each security underlying the HOLDR must be registered under Section 12 of the Exchange Act;

(b) Each company whose securities are underlying securities for the HOLDR must have a minimum public float of at least $150 million;

(c) Each security underlying the HOLDR must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security;

(d) Each company whose securities are underlying securities for the HOLDR must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(e) Each company whose securities are underlying securities for the HOLDR must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million; and

(f) The most heavily weighted security in the HOLDR cannot initially represent more than 20% of the overall value of the HOLDR.

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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CHX Article XXVIII, Rule 27 (Trust Issued Receipts) to provide standards

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which has been incorporated into the proposed rule change, the Exchange replaced a reference to ''trust issued receipts'' with a reference to ''a series of HOLDRs'' in the text of proposed Interpretation and Policy .01 to CHX Rule 27. *See* Letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Andrew Shipe, Attorney, Division of Market Regulation, SEC, dated June 6, 2000.

[4] ''HOLDRs'' and ''HOLding Company Depositary Receipts'' are service marks of Merrill Lynch & Co.

[5] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class. 17 CFR 240.19b–4(e).

that permit listing and trading, or trading pursuant to unlisted trading privileges, of HOLDRs pursuant to Exchange Act Rule 19b–4(e).

On October 22, 1999, the Exchange received Commission approval for a new rule that permits the trading of Trust Issued Receipts.[6] Since that time, the Exchange has begun trading, pursuant to unlisted trading privileges, several different Trust Issued Receipts, including Internet HOLDRs, Biotech HOLDRs, Pharmaceutical HOLDRs, Telecommunications HOLDRs and Broadband HOLDRs.[7] The Exchange believes that it will want the opportunity to similarly trade additional HOLDRs products that are developed from time to time.

To accommodate the efficient listing and trading, or trading pursuant to unlisted trading privileges, of additional HOLDRs, the Exchange proposes to add a new Interpretation to its existing rule to permit the listing and trading of HOLDRs pursuant to Rule 19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change under the Act, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[8]

As described above, the Commission has previously approved rules that permit the listing and trading of individual HOLDRs. In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the Exchange rules and surveillance programs that govern their trading. Indeed, each of the Exchange's proposals to trade these products was set forth in a separate Form 19b–4 and published in the **Federal Register**, thus providing interested parties an opportunity to comment on the proposals. No comments were received.

CHX Article XXVIII, Rule 27 subjects HOLDRs to all of the Exchange's trading rules by expressly providing that the provisions of the Exchange's Constitution and all other rules and policies of the Board of Governors apply to the trading of HOLDRs by the Exchange.[9] Further structure is added to the listing or trading of these products through the initial and continued listing standards established for this product class. These standards confirm that, for each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time trading begins on the Exchange.[10] These standards also confirm that, following the initial twelve month period after trading begins, the Exchange will consider the suspension of trading in, or removal from listing of a Trust Issued Receipt if: (1) The Trust has more than 60 days remaining until termination and there are fewer than 50 record or beneficial holders of Trust Issued Receipts for 30 or more consecutive days; (2) the Trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than $1,000,000; or (4) any other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.[11]

Under the new Interpretation proposed by the Exchange, the Exchange could list or trade, pursuant to Rule 19b–4(e), any HOLDRs that met the following additional criteria: (1) The common stock of each company included as an underlying security in the HOLDR must be registered under Section 12 of the Act; (2) each company whose securities are underlying securities for the HOLDR must have a minimum public float of at least $150 million; (3) each security included as an underlying security must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security; (4) each company whose securities are underlying securities for the HOLDR must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; and (5) each company whose securities are underlying securities for the HOLDR must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million. Finally, no security included as an underlying security may initially represent more than 20% of the overall value of the receipt.[12]

The Exchange believes that these additional criteria will ensure that no security included as an underlying security in a HOLDRs product will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various HOLDRs to meet investors' needs. These criteria also will ensure sufficient liquidity for those investors seeking to purchase and deposit the underlying securities with the trustee to create a new HOLDR.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[13] in that it is designed 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 teh public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change. Indeed, the rule change encourages competition among markets by allowing more than one exchange to list and trade the products described in this proposal pursuant to Rule 19b–4(e).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants of Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate upon to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[6] *See* Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999).

[7] *See, e.g.,* Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (Internet HOLDRs); Securities Exchange Act Release No. 42348 (January 18, 2000), 65 FR 5006 (February 2, 2000) (Biotech HOLDRs).

[8] 17 CFR 240.19b–4(e).

[9] Exceptions exist where a trading rule is inconsistent with the Trust Issued Receipt listing standard or where the context otherwise requires. CHX Article XXVIII, Rule 27(e).

[10] *See* CHX Article XXVIII, Rule 27(c)(1)

[11] *See* CHX Article XXVIII, Rule 27(c)(2).

[12] Each HOLDR product approved by the Commission to date has met these criteria. *See supra,* note 7.

[13] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–16 and should be submitted by July 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17147 Filed 7–6–00; 8:45 am]

BILLING CODE 8010–01–M

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42991; File No. SR–GSCC–00–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Choice of Law Rules

June 29, 2000.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on April 27, 2000, the Government Securities Clearing Corporation (''GSCC'') 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 primarily prepared by GSCC. 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 proposed rule change will amend GSCC's rules by specifying that GSCC's rules will be governed by and interpreted under the laws of the State of New York.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC proposes to add a new provision to its rules that will specify that GSCC's rules and the rights and obligations under the rules will be governed by the laws of the State of New York without regard to New York's conflicts of laws principles. Even though GSCC believes that New York law governs its rules since GSCC's membership agreement states that the agreement and rules are expressly governed by New York law, GSCC believes that the proposed rule change will eliminate any doubts as to which law governs its rules.

GSCC believes that being governed by New York law is appropriate and offers numerous advantages, including: (i) New York has well-established commercial law principles; (ii) GSCC is established under the New York Business Corporation Law; (iii) GSCC is located in New York; and (iv) the majority of GSCC's members have their principal office in New York.

GSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F)[3] of the Act and the rules and regulations thereunder because it will clarify GSCC's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

Written comments relating to the proposed rule change have not yet been solicited or received.[4] GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 GSCC 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. SR–GSCC–00–03 and should be submitted by July 28, 2000.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] Members will be notified of the rule change filing and comments will be solicited by an Important Notice.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17144 Filed 7–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42990; File No. SR–NYSE–00–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 37

June 28, 2000.

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 16, 2000 the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 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 NYSE proposes to amend the text of Rule 37 (Visitors) to expand the category of officials authorized to allow visitors access to the Exchange Trading Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE rule 37 prescribes who is authorized to permit visitor admission to the Trading Floor of the Exchange (''Floor''). The proposed amendment to NYSE Rule 37 is designed to expand the categories of officials authorized to allow visitors access to the Floor.

According to the current NYSE Rule 37, authority to allow visitors access to the Floor is vested only in an ''Officer of the Exchange.'' The proposed amendments would extend this authority to three Floor Official designations: Floor Directors, Floor Governors, and Senior Floor Officials between the hours of 10 a.m. and 3:30 p.m. The NYSE believes that broadening authority in this way will result in a more flexible and efficient Floor visitation system. However, during the time period between 9 a.m. to 10 a.m. (30 minutes before and after the opening), and 30 minutes prior to closing the proposed amendments to the NYSE Rule 37 would require that the approval of an Exchange Officer or a Floor Director (or Senior Floor Official or Floor Governor in the absence of a Floor Director) for visitors to be admitted to the Floor. Special attention is accorded these intervals given that they are often the focus of heightened trading activity.

In general, Floor Officials are members of the Exchange who are appointed as Floor Officials. Floor officials provide interpretive advice on auction market procedures and the Exchange's rules and regulations. They play a significant role in handling unusual market situations so that trading may be conducted in a fair and orderly manner. Each Director of the Exchange's Board of Directors who is active on the Floor is appointed as a Floor Official. These Directors are known as Floor Directors. Floor Governors are members who are designated by the Chairman of the Board. They are empowered to perform any duty, make any decision, or take any action assigned to or required of a Floor Director, as prescribed by the Rules of the Board. Senior Floor Officials are former Floor Directors or Floor Governors and are appointed by virtue of their experience.

Exchange policy pursuant to NYSE Rule 37, as reflected in The Floor Conduct and Safety Guidelines, will be amended to conform to these changes in a separate filing.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(6)(5)[4] in particular, in that it is designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market. The amendments to NYSE Rule 37 support these goals by promoting the efficient, undisrupted conduct on the floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE represents that it does not believe that the proposed rule change will impose any 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

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(3)[6] thereunder because the Exchange represents that it is concerned solely within the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statemenets with respect to the prposed rule change

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(3).

that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–28 and should be submitted by July 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17145 Filed 7–6–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25–23, Airworthiness Criteria for the Installation Approval of a Terrain Awareness and Warning System (TAWS) for Part 25 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25–23, Airworthiness Criteria for the Installation Approval of a Terrain Awareness and Warning System (TAWS) for Part 25 Airplanes. The AC provides guidance for designing an acceptable installation for a TAWS that is compliant with Technical Standard Order (TSO) C151. The guidance provided is specific to installations of these systems on transport category airplanes.

DATES: Advisory Circular 25–23 was issued on May 22, 2000, by the Acting Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration.

HOW TO OBTAIN COPIES: A paper copy of AC 25–23 may be obtained by writing to U.S. Department of Transportation, Subsequent Distribution Center, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, Maryland 20785. The AC also will be available on the Internet at *http://www.faa.gov/avr/air/airhome.htm,* at the link titled ''Advisory Circulars'' under the ''Available Information'' drop-down menu.

FOR FURTHER INFORMATION CONTACT: For technical issues, contact J. Kirk Baker, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, Systems & Equipment Branch, ANM–130L, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5345; fax (562) 627–5210.

For other information contact: Jill DeMarco, FAA, Transport Airplane Directorate, Program Management Branch, ANM–114, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1313; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

On September 23, 1999, the FAA issued a notice of the availability of proposed Advisory Circular (AC) 25.XX, ''Airworthiness Criteria for the Installation Approval of a Terrain Awareness and Warning System (TAWS) Approved under Technical Standard Order (TSO) C151.'' That notice was published in the **Federal Register** on September 30, 1999 (64 FR 52820) and requested public comment on the proposed AC document. Five commenters submitted comments to the proposed AC. A discussion and disposition of each comment follows.

Format of AC

Some commenters request that the format of the proposed AC be improved. One commenter requests that a table of contents or index be included.

The FAA concurs and has added a table of contents to the final document.

Guidance for Part 23 Airplanes

One commenter requests that the proposed AC be revised to include guidance on TAWS installations for airplanes certificated under 14 CFR part 23 (small airplanes).

The FAA does not concur with the commenter's request. The FAA currently is developing a separate AC that provides guidance specific to TAWS installations for part 23 airplanes. By issuing with two separate AC's, the FAA anticipates that there will be less confusion for applicants.

Definition of Class B TAWS Equipment

One commenter suggests that the definition of Class B TAWS equipment be revised to include a note indicating that Class B TAWS requires a GPS input but does not require a radio altitude input. The commenter states that the inclusion of such a note will help to clarify the composition of Class B TAWS equipment.

The FAA agrees that clarification is appropriate. Paragraph 11.b.(2), ''Radio Altimeter,'' of the final AC has been revised to specify that Class B equipment does not require a radio altitude input.

Regulatory References

One commenter requests that the reference to the requirements of § 91.223 in paragraph 5.a. be revised to add the words ''or certified'' in the phrase:

> ''§ 91.223 states that no person may operate a turbine-powered U.S.-registered airplane configured or certified with 6 or more passenger seats * * *.''

The FAA disagrees with the addition of these words. The text, as presented in the AC, is quoted directly from § 91.223 of the regulations. An AC is not the vehicle for making changes to the text of current regulations.

System Criticality/Probability

One commenter requests clarification of the descriptions of failure probability that appear in paragraph 5.b., ''System Criticality,'' of the proposed AC. The commenter suggests that the proposed text:

> ''* * * the applicant must demonstrate that the TAWS possesses a level of reliability commensurate with systems that have a failure probability of 10^{-4} or less per flight hour * * *.''

be changed to:

> ''* * * have a failure probability due to undetected failures (latent failures) of 10^{-4} or less per flight hour.''

The commenter also suggests similar changes in the probability descriptions that appear in paragraphs 7.c.(2) and 7.g.(1)(b).

On this same issue, another commenter points out that the reliability value of 10^{-3}, as stated in paragraph 7.c. of the proposed AC, is not consistent with the value of 10^{-4}, specified in paragraph 5.b.

The FAA concurs with these commenters' requests and has revised the final AC accordingly. [Although paragraph 5.b. (as it appeared in the proposed AC) has been eliminated in the final AC, the item noted by the commenter has been clarified and corrected in the final AC in paragraph 9., ''System Safety Assessment.'']

Project Specific Certification Plan (PSCP)

One commenter suggests that paragraph 7.b. of the proposed AC, concerning the Project Specific

[7] 17 CFR 200.30–3(a)(12).

Certification Plan (PSCP), be revised to include ''switches and annunciators'' in the list of items that should be included in a comprehensive system description. Additionally, this commenter requests that this paragraph provide guidance on acceptable or desirable locations for the installation of TAWS controls, control panels, annunciators, displays, etc.

The FAA concurs and has revised paragraph 8.b.(1), ''System Description,'' of the final AC accordingly.

Another commenter suggests revising paragraph 7.b. of the proposed AC by deleting the inclusion of information regarding software aspects of any certification and any certification-specific integrated circuits (ASIC). The commenter states that this issue is TSO-related and should be addressed as part of the TSO approval of the Line Replaceable Unit (LRU), not as part of the approval of the TAWS.

The FAA does not agree that the material should be deleted. Instead, the FAA has revised the final AC to clarify this issue. This information appears in paragraph 8.b.(3) of the final AC.

System Safety Assessment

One commenter requests that the text of the lead-in phrase in paragraph 7.c.(2) of the proposed AC, which concerns the System Safety Assessment, be revised to include the phrase highlighted below:

> * * * Given that TSO–C151 requires 10^{-5} for unannunciated failure, HMI, and false alerts at the box level *as a result of a TAWS computer failure,* the box as installed must meet the following criteria * * *''

The FAA does not concur. Restricting the annunciations to only those indicated as a result of a TAWS computer failure would be too limiting. The FAA's intent is for this criterion to be more comprehensive. The language as used the proposed AC is more open to the inclusion of other types of avionics architectures, such as modular types, that are being proposed today. This language has been retained in the final AC.

Another commenter suggests that paragraph 7.c.(2)(a) of the proposed AC be revised in the text concerning probability of failure of the availability of the TAWS function. The text in the proposed AC states:

> ''The probability of failure of the installed system to perform its intended function from a reliability/availability perspective * * * shall be less than or equal to 10^{-3} per flight hour.''

However, this commenter requests that the reference to ''availability'' be deleted. The commenter considers this request reasonable because:

- The FAA in the past has never had any availability requirements for a GPWS system.
- Availability is more dependent on the inputs to the TAWS system than on the TAWS computer itself.
- If an aircraft's only source of air data to the TAWS system is not designed to meet this requirement, then the TAWS system will not meet this requirement.

This commenter further states that the FAA Master Minimum Equipment List (MMEL) policy allows the TAWS function to be inoperative for up to 10 flight days. The commenter questions why the AC guidance would require availability numbers when the MMEL does not require the same.

The FAA does not concur with this commenter's requests. Controlled flight into terrain (CFIT) continues to be a major contributor to commercial jet airplane hull losses and, therefore, constitutes a failure value of at least 10^{-3} for all of the functions of a TAWS system. Furthermore, this value is consistent with the expected value of the inputs to TAWS. If the sensor input does not meet this failure level, it should be replaced with one that does.

The FAA's Flight Standards Service determines the MMEL requirements established for GPWS. The determination is made separate from the determination of hazard level. The process used to establish relief under the MMEL does not consider the use of probabilities. Instead, it is based on the FAA's evaluation of the risks associated with the system's effect on the aircraft and, along with guidance from air traffic control, the pilot's ability to operate the aircraft.

Self-Test Functions

One commenter points out that the proposed AC does not consider self-test functions, and suggests that criteria for activation or inhibition of self-test functions in flight should be provided. [For example, if a self-test function results in a failure to alert, then this should be inhibited during certain (or all) phases of flight.] The commenter suggests that the System Safety Assessment, as described in the AC, should consider whether credit may be taken for self-test functions in meeting the reliability rates provided.

The FAA concurs that self-test functions should be considered and has included reference to them in the final AC in paragraph 19., ''Ground Test Considerations.''

Software

One commenter suggests that paragraph 7.d. of the proposed AC, which addresses the verification of software requirements, is unnecessary. The commenter states that software requirements are already addressed in TSO–C151a, and requests that either the paragraph be deleted or revised to state that it applies to systems that do not meet TSO–C151a.

The FAA does not agree that the information should be deleted. However, the FAA has revised this information in the final AC to clarify the issue raised. Paragraph 10., ''Software,'' of the final AC now states:

> ''The applicant should provide evidence that the TAWS software meets the requirements of TSO–C151a and that it meets the appropriate software levels for any added feature(s).''

Position Source

One commenter points out that vertical accuracy is also a consideration for the correct function of TAWS for various phases of flight. However, paragraph 7.e. of the proposed AC, which discusses position source, does not reference any criteria for required vertical accuracy for the correct function of TAWS. The commenter suggests that the AC should include such criteria.

The FAA concurs and has expanded the final AC to include the requested criteria for both vertical and horizontal position sources. This information is located in the final AC in paragraph 11., ''Position Source.''

Terrain Database

One commenter requests revision to the guidance in paragraph 7.f.(2) of the proposed AC, which addresses verification of the TAWS terrain database. The commenter states that the requirement to ''include terrain and airport information of the area of intended operation'' may result in additional and undesired STC limitations. For example, if an applicant certifies TAWS equipment on an airplane in the United States (and uses a ''U.S. database'') there is nothing to keep the operator from moving the airplane to another region of the world and the STC would still be valid. The commenter states that limiting an STC to a region of operation would be non-productive and undesirable. Therefore, the commenter suggests that the AC be revised to require that applicants verify that an obvious TAWS failure condition will be indicated to the pilot whenever an airplane is operated outside of the region that is covered by the terrain/airport database installed on the airplane.

The FAA concurs that clarification is necessary for this item. The final AC now directs applicants to the Instructions for Continued Airworthiness, which should identify the procedures for determining the status of the terrain database. The AC states that operators should use this information to determine if the current terrain database is appropriate for the area of intended operation. This information can be found in the final AC in paragraph 12.b., ''Valid Regional Data.''

Terrain Display

One commenter notes that paragraph 7.g.(1)(a) of the proposed AC states that any device approved under TSO–C151 must be capable of providing terrain, obstacle, and alerting data to display hardware that is already onboard the airplane. The commenter states that a TAWS designed to use its own proprietary display must also support existing display hardware in the aircraft. The commenter requests that this requirement not exclude dedicated displays.

The FAA concurs and has revised paragraph 13.a.(1), ''Terrain Display,'' of the final AC accordingly.

Another commenter suggests that paragraph 7.g. of the proposed AC, which concerns display presentation criteria, be revised to address situations where the means of display is used for more than only the presentation of the terrain display. The commenter suggests the addition of a new paragraph that states:

> ''The applicant should consider the selection of terrain display where the display is utilized for multiple functions. In these cases, a means should be provided to select and deselect the display of terrain.''

The FAA concurs with this suggestion and has revised paragraph 13.a.(4) of the final AC accordingly.

One commenter requests a revision to paragraph 7.g.(2) of the proposed AC, which addresses the terrain display presentation. The commenter points out that paragraph 7.g.(2)(g) states that the terrain display should be ''viewable in direct sunlight, and at least one display must be viewable by each pilot.'' The commenter requests that consideration be given for aircraft with only one display. Single displays are common in older aircraft, where weather radar PPI displays may be installed on only one side of the flightdeck. The commenter suggests that the wording be changed to ''* * * at least one display must be viewable by one of the pilots.''

The FAA concurs and has revised paragraph 13.b.(7), ''Terrain Display Presentation,'' of the final AC accordingly.

One commenter suggests a revision to paragraph 7.g.(2)(h) of the AC, which concerns the display of a ''failed and/or inoperative TAWS'' indication to the flight crew. The commenter suggests that an ''inhibited TAWS'' should be indicated as well, and suggests that the text of the AC be changed to include this.

The FAA concurs and has revised paragraph 13.b.(8) of the final AC accordingly.

One commenter points out an inconsistency between guidance provided in paragraph 7.g.(2)(n) of the AC, concerning the selected colors of the terrain display, and the requirements of § 25.1322 (''Warning, caution, and advisory lights''). The commenter notes that § 25.1322 calls for indication lights to be red (for warnings) or amber (for cautions); however, paragraph 7.g.(2) of the AC appears to contradict this where it states, ''TAWS equipment shall be designed to interface with a terrain display, either color or monochromatic.'' The commenter is concerned that the use of a monochromatic display would violate the regulations and, therefore, suggests that acceptability of monochromatic displays must be deleted.

The FAA concurs that clarification of this item is needed. The final AC has been revised to specify that the terrain display feature applies only to color displays. This information is found in paragraph 13.b.(14) of the final AC.

Pop-Up Mode Switching Functionality

One commenter requests that paragraph 7.g.(3)(a) of the proposed AC, which concerns pop-up mode switching functionality, be revised to address display systems that cannot accommodate annunciating the terrain display mode. The commenter suggests that this paragraph be revised to state:

> ''The terrain display mode should be annunciated on the display or, if not feasible on the display, with a mode annunciation light near the terrain display, or equivalent.''

The FAA concurs with the commenter's suggestion and has revised paragraph 13.c.(1)(d), ''Pop-Up Mode-Switching Functionality,'' of the final AC accordingly.

Another commenter requests that the AC provide guidance on acceptable default display ranges for this mode of operation.

The FAA concurs and has revised the final AC to include a new paragraph 13.c.(1)(f) to provide this guidance.

Another commenter requests that the criteria for automatic pop-up function be revised to state that the pop-up feature should automatically display TAWS-related information when a TAWS caution or warning alert occurs. The proposed AC, however, only mentions the TAWS caution alert.

The FAA disagrees. The required pilot response to a TAWS warning is an immediate climb to clear the terrain/obstacle. Pop-up of the display with a ''warning'' may distract the pilot. With a ''caution'' alert, there will be enough time for the pilot to evaluate the information on the display and determine if either a level-off is adequate or the initiation of a climb is necessary.

Alerts Within the Flightcrew's Primary Field of View

One commenter requests that paragraph 7.h.(2) of the proposed AC, which calls for the alerting system to be ''within the flightcrew's primary field of view,'' be revised to include a definition of the ''flightcrew's primary field of view.'' The commenter states that, on many retrofit installations, there is simply not any room available to install lights in today's generally accepted primary field of view. The commenter also requests that, if an applicant is retrofitting an airplane that has previously-installed alert lights, then the applicant should be allowed to use those previously-installed light locations.

The FAA agrees that clarification is appropriate. Paragraph 14, ''Alerts,'' of the final AC has been modified to include the previously-installed light

locations, and to reference the human factors considerations in the applicant's certification plan as a method of determining the flight crew's primary field of view.

Alert Prioritization

One commenter points out what seems to be a conflict in the guidance concerning the number of aural alerts permitted at one time. The commenter notes that paragraph 7.i.(1)(a) of the proposed AC states that, on aircraft equipped with a TAWS, Predictive Windshear System (PWS), and a Traffic Collision Avoidance System (TCAS), ''only one aural alert is given at any one time.'' However, the NOTE at the bottom of Table 2 states, ''Voice callouts are allowed simultaneously with TCAS.'' The commenter requests clarification of this issue.

The FAA concurs that clarification is necessary. The FAA's intent is to prioritize callouts so that only one is given at any time. Therefore, Table 2 (''Recommended Voice Prioritization between the TAWS and Other Systems Installed'') of the final AC has been revised to delete the references to simultaneous callouts.

Another commenter questions the material contained in Table 2 of the proposed AC. The commenter asks if the ''PDA ('Too Low Terrain') Caution,'' shown as Priority Level 9 on the table, is considered a separate function or sub-function of the forward-looking terrain-avoidance (FLTA) function. In the table, the term ''(FLTA)'' follows the term ''PDA * * * Caution.'' The commenter finds the meaning of this unclear. Additionally, this commenter questions whether Table 2 is intended to consider both Class A and Class B TAWS.

The FAA concurs that clarification of the information presented in Table 2 is appropriate. First, the FAA has deleted the term ''(FLTA)'' that appears in the Priority Level 9 column, as it is inappropriate in that section of the table. Second, the FAA has revised Table 2 to include indications in each Priority Level as to whether the guidance applies to Class A TAWS, Class B TAWS, or both systems.

System Inhibit

One commenter requests that paragraph 7.j. of the proposed AC, concerning system inhibit, be revised to clarify the system inhibit provisions for Class B TAWS systems. The commenter notes that TSO–C151 does not require Class B systems to inhibit the FLTA and PDA functions while maintaining basic GPWS functions, and requests that the AC specify this.

The FAA agrees and has clarified this information in the final AC in paragraph 16., ''System Inhibit.''

Flight Data Recorders

One commenter suggests deletion of paragraph 7.k. of the proposed AC, which addresses considerations relevant to flight data recorders. The commenter states that this is essentially an LRU issue and should be addressed via the TSO approval process. Since there are no FAA requirements to record TAWS FLTA alerts, this does not need to be addressed in the AC.

Similarly, another commenter notes that paragraph 7.k. implies that flight data recorders certificated under part 91 (and potentially all JAA-certificated flight data recorder installations) should have a means to record FLTA alerts as well as FLTA and/or PDA inhibits. The commenter states that this information is not recorded today in these installations and the format is not defined. The commenter requests that this paragraph be clarified as to its specific installation application.

The FAA does not consider that any change to the information concerning flight data recorders is necessary. The AC clearly specifies that the guidance applies only to aircraft that are defined by the requirements of § 25.1459 (''Flight recorders''). Furthermore, it specifies the recording requirements for the various alerts associated with TAWS. (This information is found in the final AC in paragraph 17, ''Flight Data Recorder.'')

Human Factors

One commenter requests clarification of paragraph 7.l. of the proposed AC, which addresses inclusion of human factors considerations as part of the certification program. The commenter suggests that the paragraph clarify the requirements for a first-time certification of a display design versus follow-on installations or minor display improvements. The commenter considers that follow-on certifications (i.e., same display design in different aircraft) and minor changes should not require the rigorous human factor review that a new display design should require.

The FAA agrees that clarification on this issue is necessary. The FAA has revised the final AC by eliminating the separate paragraph addressing human factors, and including the pertinent information in paragraph 8.f., ''Testing Plan.''

Flight Test Requirements

One commenter suggests that paragraph 7.m.(2), of the proposed AC, which concerns flight test requirements, be revised to clarify that the ''cases'' listed are intended only to assist in determining flight test guidelines for potential TAWS configurations; however, the actual requirement for a flight test needs to be evaluated for each installation. The commenter is concerned that, with the cases written as they are, someone unfamiliar with TAWS may gain the impression that a flight test is required for every possible TAWS installation, which is not the case. To clarify this issue further, the commenter suggests that all of the ''cases'' listed be changed to ''examples.'' Additionally, the commenter requests that a note be added to state that some installations may be a combination of these examples and, as such, all of the guidance should be considered when determining flight test requirements.

The FAA agrees with this commenter's suggestions and has revised in paragraph 20.a, ''Flight Test Considerations,'' of the final AC accordingly.

One commenter requests clarification concerning the flight test requirements for follow-on installations of a previously approved TAWS in which a required sensor input has not been previously approved. The commenter assumes that bench testing of each model of sensors would be an acceptable means of compliance for these (thus, not requiring flight testing during installation of follow-ons).

The FAA agrees that clarification is required and has modified paragraph 20., ''Flight Test,'' to include guidance in determining the scope of flight testing required.

One commenter requests clarification in paragraph 7.m.(2) concerning Case 5, which pertains to a follow-on installation of a previously-approved TAWS in which the radio altitude to the TAWS equipment has not been previously approved. The commenter states that this case should not be applicable to Class B TAWS, because Class B TAWS does not require a radio altitude input. The commenter suggests that the AC specify this.

The FAA agrees with the commenter and has revised the final AC to specify that this example is not for Class B equipment.

One commenter notes that the proposed AC does not consider systems able to account for altitude variations in cold weather (function similar to the Allied Signal Geometric Altitude), other than a note in the AFMS requirements. The commenter suggests that the AC provide guidance that describes this

function and any testing associated with it.

The FAA agrees with the commenter and has revised the final AC to add this guidance in new paragraph 20.g., ''Pressure Altitude Variations in Cold Weather.''

Ground Tests

One commenter requests clarification of whether the airworthiness considerations described in paragraph 7. of the proposed AC are to be construed as requiring verification by ground or flight test. The commenter notes that the AC does not explicitly consider any ground testing required for evaluation of an installation. The commenter suggests that some items that should be considered for ground testing are:

- An acceptable location of TAWS controls, displays, an annunciators;
- Exercise of self-test functions;
- Evaluation of identified failure modes;
- Evaluation of all discretes and TAWS interfaces;
- EMI/EMC testing, and
- Electrical transient testing.

The FAA concurs with the commenter's suggestion and has revised the final AC to include a new paragraph 19., ''Ground Test Considerations,'' to include this information.

Forward Looking Terrain Avoidance (FLTA) Flight Test Requirements

One commenter suggests that the text of paragraph 7.m.(3)(a) of the proposed AC, which addresses FLTA flight test requirements, be changed from:

''Two tests are recommended * * * ,''

to:

''Test runs are recommended to be level flight at approximately 500 feet above the terrain/obstacle of interest. The test runs should verify that all alerts (cautions and warnings) are given at an appropriate point in the test run; that all pop-up, auto range, or other display features are working; and that the display depicts the terrain accurately.''

This commenter states that experience has shown that all FLTA features can be tested with level flight and there is no need to add the risk of descending toward the terrain/obstacle during the test flight.

The FAA concurs with the commenter's suggestion and has revised paragraph 20.b., ''FLTA Flight Test Considerations,'' of the final AC accordingly.

Premature Descent Alert (PDA) Flight Test Requirements

One commenter requests that paragraph 7.m.(4) of the proposed AC, which concerns PDA flight test requirements, be revised to specify that, depending on the system design, PDA flight tests may only need to be accomplished during a system's *initial* certification. The commenter states that, for the Honeywell Enhanced Ground Proximity Warning System (EGPWS) specifically, all of the inputs driving the PDA function can be tested via FLTA testing and altitude callout testing. Thus, once the function has been proven during the initial certification, follow-on certifications can be proven by alternative tests. The commenter requests that text be added to this section to allow such ''alternative'' means of testing for this system. This same commenter states that, with the Honeywell EGPWS, PDA testing can be performed most safely if the aircraft is more than 15 nautical miles (NM) from the nearest airport. The commenter requests that the AC be revised to allow PDA testing outside of 15 NM from the nearest runway to allow for testing at safer altitudes.

The FAA does not agree with the commenter's suggested changes. The FAA considers the commenter's requests to be too specific to one particular system design, and may not be appropriate for other designs. As for ''alternative means of testing,'' the FAA points out that the guidance provided in this AC applies to one acceptable means, but not the only means, of compliance; therefore, applicants have the prerogative to apply for FAA approval of alternative means of compliance, which may include alternative testing methods.

Basic GPWS Flight Test Requirements

One commenter requests a change in the text of the first sentence of paragraph 7.m.(5)(c) of the proposed AC, which concerns negative climb rate or altitude loss after takeoff. The commenter requests that the text be changed from:

''This test is conducted immediately after takeoff before climbing above 700 AGL or above runway elevation.''

to

''This test is conducted immediately after takeoff.''

The commenter states that Honeywell has been able to develop tests of its EGPWS systems for this scenario that allow for higher altitude gain, thus reducing the risk of this test flight.

The FAA does not concur. The FAA considers the commenter's requests to be too specific to one particular system design, and may not be appropriate for other designs.

Another commenter suggests paragraph 7.m.(5)(f) of the proposed AC, which concerns the Voice Callout ''Five Hundred Feet'' function, be revised to include the following note:

''If selected or utilized in the installation, this test should be conducted.'' The commenter states that not all operators elect the use of the 500-foot callout and, therefore, it is not possible to test this callout in those installations. As an alternative, the commenter suggests that this section could be changed simply to address ''altitude callouts,'' and thus test all of the selected altitude callouts.

The FAA does not concur with this commenter's request. The Voice Callout ''Five Hundred Feet'' function is required by TSO C–151 for both the Class A and B TAWS.

Terrain Display Flight Test Requirements

One commenter states that, in some new display systems, it is possible to evaluate the new display via ground tests. Therefore, this commenter suggests that paragraph 7.m.(6) of the proposed AC be revised by adding a note to indicate that ground test evaluation of a display may be acceptable if it can be shown that all aspects or performance of the display can be evaluated via ground tests.

The FAA does not concur with the commenter's request. The guidance in this section of the AC is only for first-time evaluations of displays. The commenter's concerns are covered in the guidance contained in paragraph 18. (''System Evaluations with Simulators'') and paragraph 19. (''Ground Test Considerations'') of the final AC, which provide additional guidance for other types of evaluations.

Another commenter questions whether flight testing is necessary to verify terrain display requirements. This commenter states that the Allied Signal EGPWS allows readout, via an external PC and a terminal program, of all interfaces to the EGPWS LRU. This test will determine that all signals interface properly with the system. This system also will allow simulation of all parameters inside the EGPWS unit, so that different scenarios can be simulated. During this simulation, a check of all aural and visual alerts can be made, and the presentation of terrain on the display can be checked. The commenter considers it unnecessary to require verification of the TSO-ed software with real parameters. Therefore, the commenter requests that paragraph 7.m.(6) of the proposed AC be revised to include the acceptability of ground testing for the evaluation of displays.

The FAA does not concur. The FAA considers the commenter's request to be too specific to one particular system design, and may not be appropriate for other designs.

Issued in Renton, Washington, on June 29, 2000.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 00–17243 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.335–1A, Design Dive Speed

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.335–1A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which sets forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of part 25 of the Federal Aviation Regulations (FAR) related to the minimum speed margin between design cruise speed and design dive speed for transport category airplanes.

DATES: Comments must be received on or before September 15, 2000.

ADDRESSES: Send all comments on the proposed AC 25.335–1A to: Federal Aviation Administration, Attention: James Haynes, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (425) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify proposed AC 25.335–1A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/avr/air/airhome.htm*, at the link titled ''Draft AC's.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Discussion

Section 25.335(b) requires the design dive speed, V_D, of the airplane to be established so that the design cruise speed is no greater than 0.8 times the design dive speed, or that it be based on an upset criterion initiated at the design cruise speed, V_C At altitudes where the cruise speed is limited by compressibility effects, § 25.335(b)(2) requires the margin to be not less than 0.05 Mach. Furthermore, at any altitude, the margin must be great enough to provide for atmospheric variations (such as horizontal gusts and the penetration of jet steams), instrument errors, and production variations. This AC provides a rational method for considering the atmospheric variations.

Issued in Renton, Washington, on June 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–17244 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Albany County, NY

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Town of Bethlehem, Albany County, New York.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Werner, Regional Director, New York State Department of Transportation, 84 Holland Avenue, Albany, New York 12208, Telephone: (518) 474–6178

or

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve State Route 85 in the Town of Bethlehem, Albany County, New York. The proposed improvement will involve the construction and rehabilitation of the existing route from the vicinity of its intersection with Route 140, to the Albany City Line, a distance of about 2.6 miles. Improvements to the highway are necessary to address identified transportation problems within the corridor and to accommodate the existing and projected traffic demands. In addition to the highway improvements, the project may include the widening of the existing Route 85 bridge over the Normanskill or the construction of a new parallel structure, and the rehabilitation or replacement of the existing Route 85 structure over the Thruway and the construction of a new parallel structure over the New York State Thruway.

Alternatives under consideration include (1) taking no action; (2) construction of a two lane limited access highway on new location from the Route 140 intersection to the vicinity of the existing Route 85 over Normanskill bridge (effectively extending the existing two lane facility); (3) providing a four lane facility by the construction of a new four lane limited access highway on new location from the Route 140 intersection to the vicinity of the existing Route 85 bridge over the Normanskill and then the construction of two additional lanes parallel to the existing two lane limited access highway to the vicinity of the Albany City Line. Incorporated into and studied with the various build alternatives will be design variations of grade, alignment, and local access.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. No formal Scoping Meeting is planned at this time. A public information meeting will be held after additional study. After the Draft Environmental Impact Statement (DEIS) is prepared, it will be made available for agency and public review and comment. In addition, a public hearing will be held for which a public notice will be given of the time and place of the hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 23 U.S.C. 771.123

Issued on: June 29, 2000.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 00–17220 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33843]

Arkansas and Missouri Railroad Company—Lease and Operation Exemption—Union Pacific Railroad Company

Arkansas and Missouri Railroad Company (A&M), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate 3.2 miles of rail line from Union Pacific Railroad Company (UP) at several locations near UP's Van Buren, Arkansas yard, in Sebastian County, AR. A&M states that there are no mileposts assigned to the area by UP.

Because A&M's projected annual revenues will exceed $5 million, A&M has certified to the Board on June 8, 2000, that the required notice of the transaction was posted at the workplace of the employees on the affected lines on April 6, 2000. *See* 49 CFR 1150.42(e). A&M stated in its verified notice that the transaction was scheduled to be consummated on or about June 14, 2000.[1]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33843, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James E. Howard, 90 Canal Street, Boston, MA 02114.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–17122 Filed 7–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Due to the timing of A&M's certification to the Board, consummation under normal circumstances would have to be delayed until August 7, 2000 (60 days after A&M's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)). In a decision in this proceeding served on June 29, 2000, however, the Board granted the request by A&M for waiver of the remainder of the 60-day period, as measured from the certification date to the Board, to allow consummation to occur as early as June 29, 2000, because rail employees and their unions had been given more than 60 days' actual notice in this case.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33886]

Arizona & California Railroad Company Limited Partnership d/b/a Puget Sound & Pacific Railroad Company—Lease and Operation Exemption—Union Pacific Railroad Company

Arizona & California Railroad Company Limited Partnership (ARZC) d/b/a Puget Sound & Pacific Railroad Company (PS&P),[1] has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 1.8 miles of certain rail lines from the Union Pacific Railroad Company (UP) as follows: (1) From UP milepost 53.83 to UP milepost 54.23; and (2) from UP milepost 55.28 to UP milepost 56.70, in Aberdeen and Hoquiam Counties, WA.

The transaction was scheduled to be consummated on or after June 26, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33886, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–17121 Filed 7–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] ARZC is an existing Class III rail carrier, and PS&P is an operating division of ARZC. See Arizona & California Railroad Company Limited Partnership—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33448 (STB served Sept. 11, 1997).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33884]

Wisconsin Central Ltd.—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC) has agreed to amend the overhead trackage rights previously granted to Wisconsin Central Ltd. (WCL) over its line of railroad between IC's connection with Union Pacific near 16th Street in Chicago and IC's Markham Yard in Hazel Crest, IL, a distance of approximately 22 miles.[1] Previously, WCL used those rights to interchange traffic with IC and Grand Trunk Western Railroad Incorporated at Markham Yard, and also to interchange traffic at a connection point with Norfolk and Western Railway Company near 95th Street in Chicago, IL.

The transaction is scheduled to be consummated on or shortly after July 5, 2000.

The proposed amendment to the trackage rights would grant additional rights to WCL and will allow WCL to connect directly with lines of the Chicago South Shore and South Bend Railroad (CSS) at 115th Street in Chicago, thus providing for a streamlined route for roofing granules

[1] *See Wisconsin Central Ltd.—Trackage Rights Exemption—The Baltimore and Ohio Chicago Terminal Railroad Company,* Consolidated Rail Corporation, Illinois Central Railroad Company, and Chicago and North Western Transportation Company, Finance Docket No. 31659 (ICC served Oct. 31, 1990).

and other goods originating on the WCL in Kremlin, WI, to reach CSS-served customers and possibly to reach other carriers connecting with CSS.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33884, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., Wisconsin Central Ltd., One O'Hare Centre, 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16859 Filed 7–6–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 27, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0046.
Form Number: ATF F 27–G.
Type of Review: Extension.
Title: Applications—Volatile Fruit-Flavor Concentrate Plants.
Description: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement.
Respondents: Business of other for-profit.
Estimated Number of Recordkeepers: 10.
Estimated Burden Hours Per Recordkeeper: 3 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 30 hours.

OMB Number: 1512–0138.
Form Number: ATF F 5120.20.
Type of Review: Extension.
Title: Certification of Tax Determination—Wine.
Description: ATF F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,000.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 500 hours.

OMB Number: 1512–0191.
Form Number: ATF F 5100.16.
Type of Review: Extension.
Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.
Description: ATF F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. ATF uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 300 hours.

OMB Number: 1512–0192.
Recordkeeping Requirement ID Number: ATF REC 5110/02.
Form Number: ATF F 5110.11.
Type of Review: Extension.
Title: Distilled Spirits Plants Warehousing Records, ATF REC 5110/02 and Reports, ATF F 5110.11.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. It also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 230.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting/Recordkeeping Burden: 5,520 hours.

OMB Number: 1512–0203.
Recordkeeping Requirement ID Number: ATF REC 5110/06.
Type of Review: Extension.
Title: Distilled Spirits Plants—Excise Taxes.
Description: Collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 133.
Estimated Burden Hours Per Recordkeeper: 26 hours.
Frequency of Response: Weekly.
Estimated Total Recordkeeping Burden: 3,458 hours.

OMB Number: 1512–0207.
Form Number: ATF F 5110.43.
Recordkeeping Requirement ID Number: ATF REC 5110/04.
Type of Review: Extension.
Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.
Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 98.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting/ Recordkeeping Burden: 1,176 hours.

OMB Number: 1512–0460.

Recordkeeping Requirement ID Number: ATF REC 5110/12.

Type of Review: Extension.

Title: Equipment and Structures.

Description: Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and the accurate determination of contents..

Respondents: Business or other for-profit.

Estimated Number of Respondents: 281.

Estimated Burden Hours Per Respondent: 0 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0555.

Form Number: None.

Type of Review: Extension.

Title: Recordkeeping Requirements for Importers of Tobacco Products.

Description: Importers of tobacco products are required to maintain records of physical receipts and disposition of tobacco products to be able to prepare ATF Form 5220.6, a monthly report. Importers of tobacco products will consistent of both large and small businesses that operate for profit.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,500.

Estimated Burden Hours Per Recordkeeper: Usual and Customary.

Frequency of Response: Monthly.

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–17235 Filed 7–6–00; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 28, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0006.

Form Number: ATF F 3310.4.

Type of Review: Extension.

Title: Report of Multiple Sales or Other Disposition of Pistols and Revolvers.

Description: The form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

Respondents: Business of other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,000 hours.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–17236 Filed 7–6–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 28, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0043.

Form Number: Customs Form 3311.

Type of Review: Extension.

Title: Declaration for Free Entry of Returned American Products.

Description: This collection of information is used as a supporting documents which substantiates the claim for duty free status for returning American products.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 12,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 51,000 hours.

OMB Number: 1515–0088.

Form Number: None.

Type of Review: Extension.

Title: Foreign Assemblers Declaration (with Endorsement by Importer).

Description: The Foreign Assembler's Declaration with Importer's Endorsement it used by Customs to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the U.S.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 2,730.

Estimated Burden Hours Per Respondent: 50 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 302,402 hours.

OMB Number: 1515–0191.

Form Number: Customs Form 5106.

Type of Review: Extension.

Title: Importer Input Record.

Description: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or refund check upon adjustment of a cash collection.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100 hours.

Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–17237 Filed 7–6–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning an extension, without change, of an information collection titled Leasing—12 CFR part 23. The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: You should submit your written comments to both OCC and the OMB Reviewer by August 7, 2000.

ADDRESSES: You should send your written comments to the Communications Division, Attention: 1557–0206, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to OMB by contacting Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0206), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Leasing—12 CFR part 23.

OMB Number: 1557–0206.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information requirements in 12 CFR part 23 are located as follows:

12 CFR 23.4(c)—Reporting: A national bank must liquidate or re-lease property that is no longer subject to lease (off-lease property) as soon as practicable, but no later than five years from the lease expiration. A bank wishing to extend that five-year holding period for up to an additional five years must obtain OCC approval. To ensure that a bank is not holding property for speculative reasons, the OCC requires the bank to provide a clearly convincing demonstration why an additional holding period is necessary. This requirement provides flexibility for a bank when it faces unusual and unforeseen conditions under which it would be imprudent to dispose of the off-lease property. As a result, this requirement confers a benefit on national banks and may result in cost savings.

12 CFR 23.4(c)—Recordkeeping: A national bank must value off-lease property at the lower of current fair market value or book value promptly after the property comes off-lease.

12 CFR 23.5—Recordkeeping: A national bank may engage in two types of lease financing. First, a national bank may acquire tangible or intangible personal property for purposes of lease financing if the lease serves as the functional equivalent of a loan. There is no aggregate volume limitation on a bank's investment in personal property that it leases pursuant to the foregoing authority. Second, a national bank may acquire tangible personal property for purposes of lease financing up to 10 percent of the assets of the bank. Section 23.5 requires that if a bank enters into both types of leases, its records must distinguish between the two types of leases.

National banks need these information collections to ensure that they conduct their operations in a safe and sound manner and in accordance with Federal banking statutes and regulations. These information collections also provide needed information for examiners and protections for banks. The OCC uses this information to verify compliance.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 580.

Estimated Total Annual Responses: 625.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,610 burden hours.

OCC Contact: Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, OMB No. 1557–0206, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0206, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Comments: Your comment will become a matter of public record. You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) Whether the OCC's burden estimate is accurate;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection

techniques or other forms of information technology; and

(e) Whether the OCC's estimates of the capital or startup costs and costs of operation, maintenance, and purchase of services to provide information are accurate.

Dated: June 30, 2000.

Mark J. Tenhundfeld,

Assistant Director,, Legislative & Regulatory Activities Division.

[FR Doc. 00–17232 Filed 7–6–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–43]

Tuna Fish—Tariff-Rate Quota

The tariff-rate quota for calendar year 2000, on tuna classifiable under subheading 1604.14.20, Harmonized Tariff Schedule of the United States (HTSUS).

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna fish for calendar year 2000.

SUMMARY: Each year, the tariff-rate quota for tuna fish described in subheading 1604.14.20, HTSUS, is based on canned tuna production by the United States for the preceding calendar year. This document sets forth the quota for calendar year 2000.

EFFECTIVE DATES: The calendar year 2000 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Porter, Chief, Quota/Visa Branch, Trade Programs, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, (202) 927–5399.

Background

It has been determined that 28,305,623 kilograms of tuna may be entered or withdrawn from warehouse for consumption during the calendar year 2000, at the rate of 6 percent ad valorem under subheading 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: June 30, 2000.

Raymond W. Kelly,

Commissioner.

[FR Doc. 00–17137 Filed 7–6–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Information Collection; Comment Request

ACTION: **Federal Register** pre-clearance notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)). Currently, the Treasury Department's Office of Foreign Assets Control is soliciting comments concerning the information collection provisions of the Iraqi Sanctions Regulations, 31 CFR 575.523, 575.524, and 575.525.

DATES: Written comments should be received on or before September 5, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Merete M. Evans, Staff Assistant to the Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (tel.: 202/622–2500).

FOR FURTHER INFORMATION CONTACT: David W. Mills, Chief, Policy Planning and Program Management (tel.: 202/622–2500); Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622–2490); Mrs. B.S. Scott, Chief, Penalties Program (tel.: 202/622–6140); or Barbara C. Hammerle, Acting Chief Counsel (tel.: 202/622–2410); Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Iraqi Sanctions Regulations.

OMB Number: 1505–0130.

Abstract: Sections 575.523, 575.524, and 575.525 in Subpart E, impose information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A) (copies are attached)). Section 575.523 provides a statement of licensing policy for U.S. persons seeking to purchase petroleum and petroleum products from the Government of Iraq or Iraq's State Oil Marketing Organization (''SOMO'') pursuant to UNSC Resolution 986, other relevant Security Council resolutions, and guidance provided by the 661 Committee.

Sections 575.524 and 575.525 provide statements of licensing policy for the exportation to Iraq of pipeline parts and equipment necessary for the safe operation of the Iraqi portion of the Kirkuk-Yumurtalik pipeline system, and the sale of humanitarian aid to Iraq.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Businesses and other for-profit institutions/banking institutions/individuals.

Estimated Number of Respondents: 150 respondents.

Estimated Time Per Respondent: 1 hour to process.

Estimated Annual Burden Hours: 150 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Barbara C. Hammerle,

Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury.

[FR Doc. 00–17126 Filed 6–30–00; 3:59 pm]

BILLING CODE 4810–25–U

Corrections

Federal Register
Vol. 65, No. 131
Friday, July 7, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OH–132–2; KY–116–2; KY–84–2; FRL–6717–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio and Kentucky

Correction

In rule document 00–15294 beginning on page 37879 in the issue of Monday, June 19, 2000, make the following correction:

§81.318 [Corrected]

On page 37900, in §81.318, in the table, the title, ''OHIO–OZONE'' should read ''KENTUCKY–OZONE''.

[FR Doc. C0–15294 Filed 6–29–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC72

Amendments to Gas Valuation Regulations for Indian Leases

Correction

In proposed rule document 00–15201 beginning on page 37504 in the issue of Thursday, June 15, 2000, make the following correction:

1. On page 37504, in the second column, in the last paragraph, in the second line, ''30 CFR 206.174(1)'' should read ''30 CFR 206.174(l)''.

2. On the same page, in the third column, in the first full paragraph, in the first line, ''§2096.174(1)'' should read ''§2096.174(l)''.

3. On the same page, in the same column, in the second full paragraph, in the ninth line, ''most'' should read ''more''.

4. On the same page, in the same column, in the same paragraph, in the 15th line, ''§206.174(1)'' should read ''§206.174(l)''.

5. On page 37505, in the first column, in the first full paragraph, in the 12th line from the bottom, ''§206174(l)'' should read ''§206.174(l)''.

6. On the same page, in the same column, in the second full paragraph, in the second line, ''§206.174(1)'' should read ''§206.174(l)''.

7. On page 37506, in the third column, in the first paragraph, in the eighth line, ''does'' should read ''Does''.

§206.174 [Corrected]

8. On page 37507, in the first column, in §206.174, in amendatory instruction 2., paragraph ''(1)'' should read ''(l)''.

[FR Doc. C0–15201 Filed 6–29–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4581–N–01]

Fiscal Year 2000 Notice of Funding Availability for the Assisted Living Conversion Program (ALCP) for Section 202 Projects

Correction

In notice document 00–6572 beginning on page 14694 in the issue of Friday, March 17, 2000 make the following correction:

On page 14701, in the third column, in paragraph (e), in the second line,''inch'' should read ''¼ inch ''.

[FR Doc. C0–6572 Filed 6–30–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42787; File No. SR–Amex–00–14]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Generic Listing Standards Applicable to Listing Portfolio Depository Receipts and Index Fund Shares Pursuant to Rule 19b-4(e) Under the Securities Exchange Act of 1934

May 15, 2000.

Correction

In notice document 00–13004 beginning on page 33598, in the issue of Wednesday, May 24, 2000, make the following correction:

On page 33598, in the first column, the date is added to read as set forth above.

[FR Doc. C0–13004 Filed 6–30–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42767; File No. SR–PCX–99–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Its Competing Specialist Program

May 9, 2000.

Correction

In notice document 00–12272, beginning on page 31200, in the issue of Tuesday, May 16, 2000, make the following correction:

On page 31200, in the third column, the date is added to read as set forth above.

[FR Doc. C0–12272 Filed 6–30–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24444; File No. 812–11960]

First Allmerica Financial Life Insurance Company, et al.

May 5, 2000.

Correction

In notice document 00–12132, beginning on page 31029, in the issue of Monday, May 15, 2000, make the following correction:

On page 31029, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C0–12132 Filed 6–30–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24443; File No. 812–11858]

Valley Forge Life Insurance Company, et al.

May 5, 2000.

Correction

In notice document 00–11960, beginning on page 30651, in the issue of Friday, May 12, 2000, make the following correction:

On page 30651, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C0–11960 Filed 6–30–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42864; File No. SR–NSCC–99–09]

Self-Regulatory Organizations: National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Additional Procedures for Class A Surveillance of Certain Settling Members and to the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

May 30, 2000.

Correction

In notice document 00–14253, beginning on page 36204, in the issue of Wednesday, June 7, 2000, make the following correction:

On page 36204, in the second column, the date is added to read as set forth above.

[FR Doc. C0–14253 Filed 6–30–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
July 7, 2000

Part II

Department of Labor

Mine Safety and Health Administration

Department of Health and Human Services

Centers for Disease Control and Prevention

30 CFR Part 72

Determination of Concentration of Respirable Coal Mine Dust; Proposed Rule

30 CFR Parts 70, 75 and 90

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

30 CFR Part 72

RIN 1219–AB18

Determination of Concentration of Respirable Coal Mine Dust

AGENCIES: Mine Safety and Health Administration (MSHA), Labor, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services (DHHS).

ACTION: Proposed rule; notice of hearings.

SUMMARY: This proposal announces that the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) would find in accordance with sections 101 (30 U.S.C. 811) and 202(f)(2) (30 U.S.C. 842(f)(2)) of the Federal Mine Safety and Health Act of 1977 (Mine Act) that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries are proposing to rescind a previous 1972 finding, by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, on the validity of such single-shift sampling. Today's proposal addresses the final decision and order in *NMA* v. *Secretary of Labor,* issued by the United States Court of Appeals for the 11th Circuit on September 4, 1998 (153 F. 3d 1264). That case vacated a 1997 Joint Finding and MSHA's proposed policy concerning the use of single, full-shift respirable dust measurements to determine noncompliance when the applicable respirable dust standard was exceeded.

The Agencies are also announcing that they will hold public hearings on the joint proposed rule within 45 to 60 days of its publication. The hearings will be held in the following locations: Prestonsburg, Kentucky (Jenny Wiley State Park); Morgantown, West Virginia; and Salt Lake City, Utah.

DATES: Comments concerning this proposed rule should be submitted on or before August 7, 2000.

The hearing dates, times and specific locations will be announced by a separate document in the **Federal Register**. The rulemaking record will remain open 7 days after the last public hearing.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send your comments to MSHA. Clearly identify comments as such and send them—(1) By mail to Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director, Office of Standards, Regulations and Variances; MSHA; 703–235–1910. Copies of this proposed rule in alternative formats may be obtained by calling (703) 235–1910. The alternative formats available are large print, electronic file on computer disk, and audiotape. The proposed rule is also available on the Internet at http://www.msha.gov.

SUPPLEMENTARY INFORMATION: In accordance with sections 101 and 202(f) of the Mine Act (30 U.S.C. 811 and 842(f)), this proposed mandatory standard is published jointly by the Secretaries of the Departments of Labor, and Health and Human Services.

I. Table of Contents

The preamble to this proposed rule on the accuracy of single shift exposure measurements discusses events leading to the proposed rule, health effects of exposure to respirable coal mine dust, degree and significance of the reduction in the number of shifts during which there are overexposures, an analysis of the technological and economical feasibility of this proposed rule, and regulatory impact and regulatory flexibility analyses.

The preamble discussion follows this outline:

I. Table of Contents
II. Introduction
III. General Discussion
A. The 1971/1972 Joint Notice of Finding
IV. NIOSH Mission Statement and Assessment of the Joint Finding
V. MSHA Mission Statement and Overview of the Respirable Dust Program
A. The Coal Mine Respirable Dust Program
B. The Spot Inspection Program (SIP)
C. The Keystone Decision
D. The Interim Single-Sample Enforcement Policy (ISSEP)
VI. Procedural and Litigation History of This Proposal
VII. Health Effects
A. Introduction
B. Hazard Identification
1. Agent: Coal
2. Physical State: Coal Mine Dust
3. Biological Action: Respirable Coal Mine Dust
C. Health Effects of Respirable Coal Mine Dust
1. Description of Major Health Effects
a. Simple Coal Workers' Pneumoconiosis (CWP) and Progressive Massive Fibrosis (PMF)
b. Other Health Effects
2. Toxicological Literature
3. Epidemiological Literature
a. Simple Coal Workers' Pneumoconiosis (CWP) and Progressive Massive Fibrosis (PMF)
b. Other Health Effects
VIII. Quantitative Risk Assessment
IX. Significance of Risk
X. Issues Regarding Accuracy of a Single, Full-Shift Measurement
A. Measurement Objective
1. The Airborne Dust to be Measured
2. Time Period to Which the Measurement Applies
3. Area Represented by the Measurement
4. Justification for the Proposed Measurement Objective
B. Accuracy Criterion
C. Validity of the Sampling Process
1. Sampler Unit Performance
2. Sample Collection Procedures
3. Sample Processing
a. Weighing and Recording
b. Sample Validity Checks
D. Measurement Uncertainty and Dust Concentration Variability
1. Sources of Measurement Uncertainty
(a) Coefficient of Variation, Weighing—CV_{weight}
(b) Coefficient of Variation, Pump—CV_{pump}
(c) Coefficient of Variation, Sampler—$CV_{sampler}$
2. Sources of Dust Concentration Variability
(a) Spatial Variability
(b) Shift-to-shift Variability
3. Other Factors Considered
(a) Proportion of Oversized Particles
(b) Anomalous Events
(c) Conversion Factor Used in the Dust Concentration Calculation
(d) Reduced Dust Standards
(e) Dusty Clothing
E. Accuracy of Single, Full-Shift Measurement
1. Quantification of Measurement Uncertainty
a. Experience Gained from Use of Control Filters
2. Verification of Method Accuracy
XI. Proposed New Finding and Proposed Rescission of the 1972 Joint Finding
XII. Feasibility Issues
A. Technological Feasibility
B. Economic Feasibility
XIII. Regulatory Impact Analysis
A. Costs and Benefits: Executive Order 12866
1. Compliance Costs
2. Benefits
B. Regulatory Flexibility Certification and Initial Regulatory Flexibility Analysis
XIV. Other Statutory Requirements
A. Unfunded Mandates Reform Act of 1995
B. Paperwork Reduction Act of 1995
C. National Environmental Protection Act

D. Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)
E. Executive Order 12988 (Civil Justice)
F. Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks)
G. Executive Order 13084 Consultation and Coordination with Indian Tribal Governments
H. Executive Order 13132 (Federalism)
XV. Public Hearings
Appendix A. The Effects of Averaging Dust Concentration Measurements
Appendix B. Why Are Individual Measurements Unbiased?
I. The Value of the MRE Conversion Factor
II. Conforming to the ACGIH and ISO Standard
III. Effects of Other Variables
Appendix C. Components of Coefficient of Variation Total (CV_{total})
I. Weighing Uncertainty
(a) Derivation of Coefficient of Variation of Weight (CV_{weight})
(b) Values Expressing Weight-Gain Uncertainty
(c) Negative Weight-Gain Measurements
(i) New Analysis of New Data Set of Negative Weight Gain for Data of Unexposed Filters
(d) Comparing Weight Gains Obtained From Paired Samples
II. Pump Variability
III. Intersampler Variability
Appendix D. Data Submitted by Previous Commenters
I. Paired Sample Data Submitted by the NMA
II. Paired Sample Data Submitted by Mountain Coal Company
III. Exposure Data Submitted by Jim Walter Resources, Inc.
IV. Exposure Data Submitted by the NMA
V. Sequential Exposure Data Submitted by Jim Walter Resources, Inc.
Appendix E. References
XVI. Regulatory Text

II. Introduction

For as long as miners have taken coal from the ground, many have suffered respiratory problems due to their occupational exposures to respirable coal mine dust. These respiratory problems, range from mild impairment of respiratory function to more severe diseases, such as silicosis and progressive massive fibrosis (PMF). For some miners, the impairment of their respiratory systems is so severe, they die prematurely. There is a clear dose-response relationship between miners' cumulative exposures (*i.e.,* dose multiplied by the time exposed to the coal mine dust) to respirable coal mine dust and the severity of resulting respiratory conditions. On each and every workshift, it is essential to prevent miners from being exposed to respirable coal mine dust concentrations that exceed the mandated exposure limits.

The Federal Coal Mine Health and Safety Act of 1969 (Coal Act) established the first comprehensive dust standard for underground U.S. coal mines by setting a limit of 2.0 milligrams of respirable coal mine dust per cubic meter of air (mg/m^3). The 2.0 mg/m^3 standard limits the concentration of respirable coal mine dust permitted in the mine atmosphere during each shift to which each miner in the active workings of a mine is exposed. Congress was convinced that the only way each miner could be protected from black lung disease or other occupational dust diseases was by limiting the amount of respirable coal mine dust allowed in the air that miners breathe.

The Coal Act was subsequently amended by the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 *et seq.* The standard limiting respirable dust in the mine atmosphere to 2.0 mg/m^3 was retained in the Mine Act, which also required that ''each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air,'' Section 202(b)(2) (30 U.S.C.842(b)). (Other provisions in the Mine Act, Sections 205 and 203(b)(2) (30 U.S.C. 845 and 843(b)(2)), provide for lowering the applicable standard when quartz is present and when miners with evidence of the development of pneumoconiosis have elected to work in a low-dust work environment).

Today, dust levels in underground U.S. coal mines are significantly lower than they were when the Coal Act was passed. Federal mine inspector sampling results during 1968–1969 showed that the average dust concentration in the environment of a continuous miner operator was 7.7 mg/m^3. Current sampling (FY 1998) indicates that the average dust level for a continuous miner operator has been reduced by 86 percent to 1.1 mg/m^3. Despite this progress, the Secretaries believe that respirable coal mine dust continues to present a serious health risk to coal miners. In November 1995, the National Institute for Occupational Safety and Health (NIOSH) issued a comprehensive review of the literature concerning occupational exposure to respirable coal mine dust in its Criteria Document (NIOSH Criteria Document, 1995). NIOSH concluded, among other things, that coal miners in our country continue to be at increased risk for developing respiratory disease as a result of their exposure to respirable coal mine dust. Although it is beyond the scope of this rulemaking, in its 1995 Criteria Document, NIOSH recommended a time weighted average exposure limit to respirable coal mine dust of 1.0 mg/m^3, up to ten hours per day for a 40-hour work week.

The Secretary of Labor and the Secretary of Health and Human Services believe that miners' health can be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust exceeding the applicable standards. MSHA's improved program to eliminate overexposures on each and every shift includes multiple rulemakings. Through this proposal, MSHA would be able to use single, full-shift respirable coal mine dust samples to more effectively identify overexposures and address them. Other overexposures to respirable coal mine dust would be prevented through finalizing a proposed rule that would require each underground coal mine operator to have a verified mine ventilation plan. MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit (MMU) to controlling respirable dust under typical mining conditions. Furthermore, that proposal would revoke underground operator compliance and abatement sampling. Consequently in underground coal mines, MSHA intends to increase the number of compliance inspections per year, and MSHA would conduct abatement sampling for non-compliance determinations. The notice of proposed rulemaking to promulgate new regulations to require operators to have a verified ventilation plan in underground coal mines is published elsewhere in today's **Federal Register**.

III. General Discussion

The issues related to this notice of proposed rulemaking are complex and highly technical. The Agencies have organized this proposal to allow interested persons to first consider pertinent introductory material on the Agencies' 1972 notice and its 1999 recission, and a short overview of the NIOSH mission and assessment of this proposal, as well as those aspects of MSHA's coal mine respirable dust program relevant to this proposal. Following this introductory material is a discussion of the ''measurement objective,'' or what the Secretaries intend to measure with a single, full-shift measurement, and the use of the NIOSH Accuracy Criterion for determining whether a single, full-shift measurement will ''accurately represent'' the full-shift atmospheric dust concentration. Next, the validity of

the sampling process is addressed, including the performance of the approved sampler unit, sample collection procedures, and sample processing. The concept of measurement uncertainty is then addressed, and why sources of dust concentration variability and various other factors are not relevant to the proposal. In addition, the proposal summarizes the health effects of occupational exposure to respirable coal mine dust and presents MSHA's quantitative risk assessment (QRA). Finally, the proposal explains how the total measurement uncertainty is quantified, and how the accuracy of a single, full-shift measurement meets the NIOSH Accuracy Criterion. Several Appendices, which contain relevant technical information, are attached and incorporated in this notice. Appendix E contains the references used throughout this notice of proposed rulemaking.

The proposed rule is consistent with Executive Order 12866, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act (SBREFA), the National Environmental Policy Act (NEPA), the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Mine Act.

A. The 1971/1972 Joint Notice of Finding

In 1971, the Secretary of the Interior and the Secretary of Health, Education, and Welfare proposed, and in 1972 issued, a joint finding under the Coal Act. The finding concluded that a single, full-shift measurement of respirable dust would not, after applying valid statistical techniques, accurately represent the atmospheric conditions to which the miner is continuously exposed. For the reasons that follow, the Secretaries believe that the 1972 joint finding was incorrect.

Section 202(b)(2) of the Coal Act provided that ''each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below the applicable respirable dust standard.'' In addition, the term ''average concentration'' was defined in section 202(f) of the Coal Act as follows:

> * * * the term ''average concentration'' means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured during an 18 month period following the date of enactment of this Act, over a number of continuous production shifts to be determined by the Secretary of the Interior and the Secretary of Health, Education and Welfare, and (2) as measured thereafter, over a single shift only, unless the Secretary of the Interior and the Secretary of Health, Education and Welfare find, in accordance with the provisions of section 101 of this Act, that such single shift measurements will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

Therefore, 18 months after the statute was enacted, the ''average concentration'' of respirable dust in coal mines was to be measured over a single shift only, unless the Secretaries found that doing so would not accurately represent mine atmospheric conditions during such shift. If the Secretaries found that a single shift measurement would not, after applying valid statistical techniques, accurately represent mine atmospheric conditions during such shift, then the interim practice of averaging measurements ''over a number of continuous production shifts'' was to continue.

On December 16, 1969, the U.S. Congress published a Conference Report in support of the new Coal Act. The Report refers to section 202(f) by noting that:

> At the end of this 18 month period, it requires that the measurements be over one production shift only, unless the Secretar[ies] * * * find, in accordance with the standard setting procedures of section 101, that single shift measurements will not accurately represent the atmospheric conditions during the measured shift to which the miner is continuously exposed (Conference Report, page 75).

This Report is inconsistent with the wording of the section 202(f), which seeks to apply a single, full-shift measurement to ''accurately represent such atmospheric conditions during such shift.'' Section 202(f) does not mention continuous exposure. The Secretaries believe that the use of this phrase, ''continuously exposed'', is confusing, and to the extent that any weight of interpretation can be given to the legislative history, that the Senate's Report of its bill provides a clearer interpretation of section 202(f) when read together with the statutory language. The Senate Committee noted in part that:

> The committee * * * intends that the dust level not exceed the specified standard during any shift. It is the committee's intention that the average dust level at any job, for any miner in any active working place during each and every shift, shall be no greater than the standard. [Standard = 2 mg/m^3]

Following passage of the Coal Act, the Bureau of Mines (MSHA's predecessor Agency within the Department of the Interior) expressed a preference for multi-shift sampling. Correspondence exchanged during that time period of 1969 to 1971 reflected concern over the technological feasibility of controlling dust levels to the limits established, and the potentially disruptive effects of mine closure orders because of noncompliance with the respirable dust limits. Both industry and government officials feared that basing noncompliance determinations on single, full-shift measurements would increase those problems. In June 1971, the then-Associate Solicitor for Mine Safety and Health at the Department of the Interior issued a legal interpretation of section 202(f), concluding that the average dust concentration was to be determined by measurements that accurately represent respirable dust in the mine atmosphere over time rather than during a shift. On July 17, 1971, the Secretaries of the Interior and of Health, Education, and Welfare issued a proposed notice of finding under section 202(f) of the Coal Act. The finding concluded that, ''a single shift measurement of respirable dust will not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner is continuously exposed'' (36 FR 13286).

In February, 1972, the final finding was issued (37 FR 3833). It concluded that:

> After careful consideration of all comments, suggestions, and objections, it is the conclusion of the Secretary of the Interior and the Secretary of Health, Education, and Welfare that a valid statistical technique was employed in the computer analysis of the data referred to in the proposed notice [footnote omitted] and that the data utilized was accurate and supported the proposed finding. Both Departments also intend periodically to review this finding as new technology develops and as new dust sampling data becomes available.
>
> The Departments intend to revise part 70 of title 30, Code of Federal Regulations, to improve dust measuring techniques in order to ascertain more precisely the dust exposure of miners. To complement the present system of averaging dust measurements, it is anticipated that the proposed revision would use a measurement over a single shift to determine compliance with respirable dust standards taking into account (1) The variation of dust and instrument conditions inherent in coal mining operations, (2) the quality control tolerance allowed in the manufacture of personal sampler capsules, and (3) the variation in weighing precision allowed in the Bureau of Mines laboratory in Pittsburgh.
>
> The proposed finding, as set forth at 36 FR 13286, that a measurement of respirable dust over a single shift only, will not, after applying valid statistical techniques to such measurement, accurately represent the

atmospheric conditions *to which the miner under consideration is continuously exposed,* is hereby adopted without change (emphasis added).

As explained in the 1971 proposed finding, the average concentration of all ten full-shift samples (from one occupation) submitted from each working section under the regulations in effect at the time (these were the ''basic samples'' referred to in the proposed notice of finding) was compared with the average concentration of the two most recently submitted samples, then to the three most recently submitted samples, then to the four most recently submitted samples, etc. In discussing the results of these comparisons, the Secretaries stated that ''* * * the average of the two most recently submitted samples of respirable dust was statistically equivalent to the average concentration of the current basic samples for each working section in only 9.6 percent of the comparisons.''

The title of the 1971/1972 notice and the conclusion it reaches are clearly inconsistent. The title states that it is a ''Notice of Finding That Single Shift Measurements of Respirable Dust Will Not Accurately Represent Atmospheric Conditions During Such Shift.'' However, the conclusion states that, ''* * * a single shift measurement * * * will not, after applying valid statistical techniques * * * accurately represent the atmospheric conditions to which the miner is *continuously* exposed'' (emphasis added).

The Secretaries have determined that section 202(f) would require a determination of accuracy with respect to ''atmospheric conditions during such shift,'' not ''atmospheric conditions *to which the miner is continuously exposed''* (37 FR 3833) (emphasis added). The Secretaries believe that the 1972 Finding does not apply the Mine Act's requirement at Section 202(f), 30 U.S.C. 842. The statistical analysis referenced in the 1971/1972 proposed and final findings simply did not address the accuracy of a single, full-shift measurement in representing atmospheric conditions during the shift on which it was taken. For this and other reasons, such as advancements in sampling technology, set forth in the notice, the Secretaries hereby propose to rescind the 1972 joint final finding.

IV. NIOSH Mission Statement and Assessment of the Joint Finding

The National Institute for Occupational Safety and Health (NIOSH) was created by Congress in the Occupational Safety and Health Act in 1970. The Act established NIOSH as part of the Department of Health, Education, and Welfare (currently NIOSH is a part of the Department of Health and Human Services) to identify the causes of work-related diseases and injuries, evaluate the hazards of new technologies, create new ways to control hazards to protect workers, and make recommendations for new occupational safety and health standards. Under section 501 of the Mine Act (30 U.S.C. 951), Congress gave specific research responsibilities to NIOSH in the field of coal and other mine health. These responsibilities include the authority to conduct studies, research, experiments and demonstrations, in order ''to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal or other mine,'' and also ''to develop techniques for the prevention and control of occupational diseases of miners * * *''

When the initial finding, issued under section 202(f) of the Coal Act, was published in 1972, both the Secretary of the Interior and the Secretary of Health, Education, and Welfare (the predecessor to the Department of Health and Human Services) indicated that the finding would be reassessed as new technology was developed, or new data became available. The Secretary of Health and Human Services, through delegated authority to NIOSH, has reconsidered the provisions of section 202(f) of the Mine Act (30 U.S.C. 842(f)), reviewed the current state of technology and other scientific advances since 1972, and has determined that the following innovations and technological advancements are important factors in the reassessment of the 1971/1972 joint finding.

In 1977, NIOSH published its ''Sampling Strategies Manual,'' which provided a framework for the statistical treatment of occupational exposure data (DHEW (NIOSH) Publication No. 77–173; Sec. 4.2.1). Additionally, that year, NIOSH first published the NIOSH Accuracy Criterion, which was developed as a goal for methods to be used by OSHA for compliance determinations (DHEW (NIOSH) Publication No. 77–185; pp. 1–5). In 1980, new mine health standards issued by the Secretary of Labor (30 CFR parts 70, 71, and 90) improved the quality of the sampling process by revising sampling, maintenance, and calibration procedures. Through the mid-nineteen-eighties, MSHA continued to refine and improve its sampling process. In 1984, a fully-automated, robotic weighing system was introduced along with state-of-the-art electronic microbalances. Prior to 1984, filter capsules used in sampling were manually weighed by MSHA personnel using semi-micro balances, making precision weights to the nearest 0.1 mg (100 micrograms). In 1994, the balances were further upgraded, and in 1995 the weighing system was again improved, increasing weighing sensitivity to the microgram level. Also, in 1987, electronic flow-control sampling pump technology was introduced in the coal mine dust sampling program with the use of Mine Safety Appliances FlowLite™ pumps.[1] These new pumps compensate for the changing filter flow-resistance that occurs due to dust deposited during the sampling period. The second generation of constant-flow sampling pumps was introduced in 1994, with the introduction of the Mine Safety Appliances Escort ELF® pump. The automatic correction provided by these new pumps improves the stability of the sampler air flow rates and reduces the inaccuracies that were inherent in the 1970–1980s vintage sampling pumps. One further improvement was made in 1992 with the introduction of the new tamper-resistant filter cassettes. Because of these evolving improvements to the sampling process, a better understanding of statistical methods applied to method accuracy, and a reconsideration of the requirements of section 202(f) of the Mine Act (30 U.S.C. 842(f)), the Secretary of Health and Human Services has determined that the previous joint finding should be reevaluated.

V. MSHA Mission Statement and Overview of the Respirable Dust Program

With the enactment of the Mine Act, Congress recognized that ''the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner.'' Congress further realized that there ''is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines.'' With these goals in mind, MSHA is given the responsibility to protect the health and safety of the Nation's coal and other miners by enforcing the provisions of the Mine Act.

[1] Reference to specific equipment, trade names or manufacturers does not imply endorsement by NIOSH or MSHA.

A. The Coal Mine Respirable Dust Program

In 1970, federal regulations were issued by MSHA's predecessor agency that established a comprehensive coal mine operator dust sampling program for underground mines. The program required the environment of the occupation on a working section exposed to the highest respirable dust concentration to be sampled—the ''high risk occupation'' concept. All other occupations on the section were assumed to be protected if the high risk occupation was in compliance. Under this program, each operator was required to initially collect and submit ten valid respirable dust samples to determine the average dust concentration across ten production shifts. If the analysis showed the average dust concentration to be within the applicable dust standard, the operator was required to submit only five valid samples a month. If compliance continued to be demonstrated, the operator was required to take only five valid samples every other month. The initial, monthly, and bimonthly sampling cycles were referred to as the ''original,'' ''standard,'' and ''alternative sampling'' cycles, respectively. When the average dust concentration exceeded the applicable standard, the operator reverted back to the standard monthly sampling cycle.

In addition to sampling the high risk occupation at specified frequencies, each miner was sampled individually at different intervals. However, these early individual sample results were not used for enforcement but were provided to NIOSH for medical research purposes. Also required to be sampled every 90 days in underground mines, beginning in 1971, and in surface mines, beginning in 1974, were individuals who had evidence of the development of pneumoconiosis and exercised their option to transfer to a low dust area.

Federal regulations establishing a comprehensive operator dust sampling program for surface coal mines were issued in 1972. Under this program, each miner was sampled initially prior to July 1, 1972, and then either semiannually, if the initial sample exceeded 1.0 mg/m^3 but was less than 2.0 mg/m^3, or annually if the initial sample was 1.0 mg/m^3 or less.

MSHA revised these regulations in April 1980 (45 FR 23990) to reduce the operator sampling burden, to simplify the sampling process, and to enhance the overall quality of the sampling program. The result was to replace the various sampling cycles in effect in underground and surface coal mines with a bimonthly sampling cycle and to eliminate the requirement that each miner be sampled. Unlike the underground sampling requirements, operators of surface coal mines were required to sample bimonthly only after a ''designated work position'' (DWP) was established by MSHA. Once established, only one sample is required to be collected each bimonthly period. Under the revised regulations, MSHA could also withdraw the designation of work positions for sampling if samples taken by the operator and by MSHA demonstrated continuing compliance with the applicable dust standard. These are the regulations that currently govern the mine operator dust sampling program at both underground and surface coal mines, and which, in the case of underground mines, continue to be based on the high risk occupation concept, now referred to as the ''designated occupation'' or ''D.O.'' sampling concept.

It should be noted that the April 1980 preamble to the final rule, amending the regulations for underground coal mines, explicitly refers to the use of single versus multiple samples as it applies to the operator respirable dust sampling program (45 FR 23997):

> Compliance determinations will generally be based on the average concentration of respirable dust measured by five valid respirable dust samples taken by the operator during five consecutive shifts, or five shifts worked on consecutive days. Therefore, the sampling results upon which compliance determinations are made will more accurately represent the dust in the mine atmosphere than would the results of only a single sample taken on a single shift. In addition, MSHA believes the revised sampling and maintenance and calibration procedures prescribed by the final rule will significantly improve the accuracy of sampling results.

At the time of these amendments, MSHA examined section 202(b)(2) of the Coal Act, which was retained unchanged in the 1977 Mine Act. The Agency stated in the preamble to the final rule that:

> Although single-[full] shift respirable dust sampling would be most compatible with this single-shift standard, Congress recognized that variability in sampling results could render single-shift samples insufficient for compliance determinations. Consequently, Congress defined ''average concentration'' in section 202(f) of the 1969 Coal Act which is also retained in the 1977 Act.

MSHA believes that this interpretation merely recognized the two ways of measurement authorized in section 202(f), and expressed the preference on the part of MSHA in 1980 to retain multi-shift sampling in the operator sampling program. The phrase used in the preamble to the final rule reflects that MSHA understood that the 2.0 mg/m^3 limit was a single-shift standard, meaning that it was not to be exceeded on a shift. The preamble referenced the continuous multi-shift sampling and single-shift sampling conducted by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, and noted that in the 1971/1972 proposed and final findings:

> ''It had been determined after applying valid statistical techniques, * * * that a single shift sample should not be relied upon for compliance determinations when the respirable dust concentration being measured was near 2.0 mg/m^3. Accordingly, the [Secretaries] prescribed consecutive multi-shift samples to enforce the respirable dust standard.''

The preamble provides no further explanation for the statement that single-shift samples should not be relied on when the respirable dust concentration being measured was near 2.0 mg/m^3. Thus, the 1980 final rule, which reduced the number of samples that operators were required to take for compliance determinations, merely reiterated the rationale behind the 1971/1972 proposed and final findings concerning single-shift samples, and did not address the accuracy of a single, full-shift measurement.

MSHA continues to take an active role in sampling for respirable dust and has recently expanded its sampling to more than once annually at each surface and underground coal mine. During these inspections, MSHA inspectors collect samples on multiple occupations to determine whether miners are being overexposed to respirable coal mine dust; to assess the effectiveness of the operator's dust control program; to quantify the level of respirable crystalline silica (quartz) in the work environment and whether there is a need to adjust the applicable dust standard; and to identify occupations in underground mines, other than the ''D.O.'', and occupations in surface mines, that are at risk of being overexposed and should be routinely monitored by the mine operator.

Depending on the concentration of respirable coal mine dust measured, an MSHA inspector may terminate sampling after the first day if levels are very low, or continue for up to five shifts or days before making a compliance or noncompliance determination. For example, MSHA inspection procedures require inspectors to sample at least five occupations, if available, on each mechanized mining unit (MMU) on the

first day of sampling. Based on the first shift of sampling, the operator is cited if the average of those measurements exceeds the applicable standard. However, if the average falls below the standard, but one or more of the measurements exceed the applicable standard, additional samples are collected on the subsequent production shift or day. The results of the first and second shift of sampling on all occupations are then averaged to determine if the applicable standard is exceeded. Additionally, when an inspector continues sampling after the first shift because a previous measurement exceeds the standard, MSHA's procedures call for all measurements taken on a given occupation to be averaged within that occupation, across all sampling shifts. If the average of measurements taken over more than one shift on all occupations is equal to or less than the applicable standard, but the average of measurements taken on any one occupation exceeds the value in a decision table developed by MSHA, the operator is cited for violation of the applicable standard.

B. The Spot Inspection Program (SIP)

In response to concerns about possible tampering with dust samples in 1991, MSHA convened the Coal Mine Respirable Dust Task Group (Task Group) to review the Agency's respirable dust program. The Task Group was directed to consider all aspects of the current program in its review, including the role of the individual miner in the sampling program; the feasibility of MSHA conducting all sampling; and the development of new and improved monitoring technology, including technology to continuously monitor the mine environment. Among the issues addressed by the Task Group was the actual dust concentration to which miners are exposed. As part of the Task Group review, MSHA developed a special respirable dust ''spot inspection program'' (SIP).

This program was designed to provide the Agency with information on the dust levels to which underground miners are typically exposed. Because of the large number of mines and MMUs (mechanized mining units) involved and the need to obtain data within a short time frame, respirable dust sampling during the SIP was limited to a single shift or day, a departure from MSHA's normal sampling procedures. The term ''MMU'' is defined in 30 CFR 70.2(h) to mean a unit of mining equipment, including hand loading equipment, used for the production of material. As a result, MSHA decided that if the average of multiple occupation measurements taken on an MMU during any one-day inspection did not exceed the applicable standard, the inspector would review the result of each individual full-shift sample. If any individual full-shift measurement exceeded the applicable standard by an amount specified by MSHA, a citation would be issued for noncompliance, requiring the mine operator to take immediate corrective action to lower the average dust concentration in the mine atmosphere in order to protect miners.

During the SIP inspections, MSHA inspectors cited violations of the 2.0 mg/m^3 standard if either the average of the five measurements taken on a single shift was equal to or greater than 2.1 mg/m^3, or any single, full-shift measurement was equal to or exceeded 2.5 mg/m^3. Similar adjustments were made when the 2.0 mg/m^3 standard was reduced due to the presence of quartz dust in the mine atmosphere.[2]

The procedures issued by MSHA's Coal Mine Safety and Health Division during the SIP were similar to those used by the MSHA Metal/Nonmetal Mine Safety and Health Division and the Occupational Safety and Health Administration (OSHA) when determining whether to cite based on a single, full-shift measurement. That practice provides for a margin of error reflecting an adjustment for uncertainty in the measurement process (*i.e.*, sampling and analytical error, ''SAE''). The margin of error thus allows citations to be issued only where there is a high level of confidence that the applicable standard has been exceeded.

Based on the data from the SIP inspections, the Task Group concluded that MSHA's practice of making noncompliance determinations solely on the average of multiple-sample results did not always result in citations in situations where miners were known to be overexposed to respirable coal mine dust. For example, if measurements obtained for five different occupations within the same MMU were 4.1, 1.0, 1.0, 2.5, and 1.4 mg/m^3, the average concentration would be 2.0 mg/m^3. Although the dust concentrations for two occupations exceed the applicable standard, under MSHA procedures, no citation would have been issued nor any corrective action required to reduce dust levels to protect miners' health. Instead, MSHA policy required the inspector to return to the mine the next day that coal was being produced and resume sampling in order to decide if the mine was in compliance or not in compliance.

Thus, the SIP inspections revealed instances of overexposure that were masked by the averaging of results across different occupations. This showed that miners would not be adequately protected if noncompliance determinations were based solely on the average of multiple measurements. The process of averaging dilutes a high measurement made at one location with lower measurements made elsewhere.

The Task Group also recognized that the results of the first full-shift samples taken by an inspector during a respirable dust inspection are likely to reflect higher dust concentrations than samples collected on subsequent shifts or days during the same inspection. MSHA's comparison of the average dust concentration of inspector samples taken on the same occupation on both the first and second day of a multiple-day sampling inspection showed that the average concentration of all samples taken on the first day of an inspection was almost twice as high as the average concentration of samples taken on the second day. MSHA recognized that sampling on successive days does not always result in measurements that are representative of everyday respirable dust exposures in the mine because mine operators can anticipate the continuation of inspector sampling and make adjustments in dust control parameters or production rates to lower dust levels during the subsequent sampling.

In response to these findings, in November 1991, MSHA decided to permanently adopt the single, full-shift inspection policy initiated during the SIP for all mining types.

C. The Keystone Decision

In 1991, three citations based on single, full-shift measurements were issued under the SIP to the Keystone Coal Mining Corporation. The violations were contested, and an administrative law judge from the Federal Mine Safety and Health Review Commission (Commission) vacated the citations. The decision was appealed by the Secretary of Labor to the Commission because the Secretary believed that the administrative law judge was in error in

[2] Quartz may be present in the coal seam and therefore may become airborne during coal production. MSHA regulates coal miners' work-shift exposure to quartz since it may be deposited in the lungs of miners and cause silicosis. MSHA's current standard for respirable coal mine dust, 2.0 mg/m^3, also requires quartz levels to be 5% or lower. Otherwise, if the percent of quartz is higher than 5%, the respirable coal mine dust exposure limit must be adjusted downward based on this formula: Respirable dust standard (mg/m^3)= {(10 mg/m^3)/(%Quartz)} For example, if the respirable dust contains 15 percentage of quartz the respirable coal mine dust standard would be 0.67 mg/m^3 since 10 mg/m^3 divided by 15 equals 0.67 mg/m^3.

finding that rulemaking was required under section 202(f) of the Mine Act (30 U.S.C. 842(f)) for the Secretary to use single, full-shift measurements for noncompliance determinations. In addition, the Secretary contended that the 1971/1972 finding pertained to operator sampling and that the SIP at issue involved only MSHA sampling. The Commission, which affirmed the decision of the administrative law judge, found that:

> Title II [of the Mine Act] applies to both operator sampling and to MSHA actions to ensure compliance, including sampling by MSHA. Section 202(g) specifically provides for MSHA spot inspections. Nothing in § 202(f) or § 202(g) suggests that § 202(f) applies differently to MSHA sampling. Thus, the 1971 finding, issued for purposes of title II, applies broadly to both MSHA and operator sampling of the mine atmosphere.

The Commission also held that the revised MSHA policy was in contravention of the 1971/1972 finding and could only be altered if the requirements of the Mine Act and the Administrative Procedure Act, 5 U.S.C. 550, were met. Through this proposed notice of rulemaking, MSHA is now attempting to meet those requirements.

D. The Interim Single-Sample Enforcement Policy (ISSEP)

On February 3, 1998, MSHA published a corrected notice in the **Federal Register** (63 FR 5687) announcing its final policy on the use of single, full-shift measurements to determine noncompliance and issue citations, based on samples collected by MSHA inspectors, when the applicable respirable dust standard is exceeded. The enforcement policy, thereafter referred to as ISSEP, which took effect on May 7, 1998, provides better protection to miners' health because it enabled MSHA to more effectively identify overexposures that were previously masked by the averaging of results across different occupations. Again, through the proposed single, full-shift sample approach, citations for noncompliance with the respirable coal mine dust standard would be able to be made for overexposures which would not be identified through the current procedure of averaging multiple-sample results. For example, if measurements obtained for five different occupations within the same MMU were 4.1, 1.0, 1.0, 2.6, and 0.8 mg/m^3, the average concentration would be 1.9 mg/m^3. Although the dust concentrations for two occupations statistically exceeded the applicable standard, under the current practice, of averaging results, no citation would be issued nor any corrective action required to reduce dust levels to protect miners' health. The ISSEP was in place until September 9, 1998, when MSHA reinstituted its previous procedure of averaging sample results for noncompliance determinations after the 11th Circuit Court of Appeals vacated the Agencies' 1998 Finding and MSHA's final policy.

Under the ISSEP, MSHA followed its existing dust sampling procedures in regard to where and how many samples an inspector collects during a sampling shift at underground and surface coal mines. While the Agency continued its practice of collecting multiple occupational samples at each MMU, the minimum number of occupations monitored was reduced from five to three, focusing only on those occupations at high risk of being overexposed. As part of the ISSEP, inspectors carried with them a control filter when conducting respirable dust sampling. This control filter, which was unexposed, was used to adjust the weight gain obtained on each of the exposed filters. Any change in weight of the unexposed control filter was subtracted from the change in weight of each exposed filter. For the exposed filter to be valid, the control and exposed filter must have been both pre- and post-weighed on the same days. If the control filter was either missing or invalid, the measurement(s) were not used for enforcement purposes and the entity type (*i.e.*, mining section) was to be resampled. An operator was found to be in violation of the applicable dust standard when a single, full-shift measurement met or exceeded the Citation Threshold Value (CTV) corresponding to the dust standard in effect. Each CTV listed in *Chapter 1 of the Coal Mine Health Inspection Procedures Handbook* (PH89–V–1(10)) was calculated to ensure that citations would be issued only when a measurement demonstrated, with at least 95-percent confidence, that the applicable standard had been exceeded.[3] No more than one citation was to be issued based on single, full-shift measurements from the same MMU, if the sampled occupations were exposed to the same dust generating sources. Issuance of separate citations were to be considered only after determining that the affected occupations were exposed to different dust generating sources.

When a single, full-shift measurement exceeded the applicable standard but was less than the CTV, a citation was not to be issued since noncompliance was not demonstrated at a sufficiently high confidence level. Instead, the MMU or other entity type sampled was to be targeted for additional sampling to verify the adequacy of the operator's dust control measures to maintain compliance, with special emphasis directed toward working environments with applicable standards below 2.0 mg/m^3. If subsequent sampling exceeded the applicable standard but not the CTV, the MSHA district responsible for inspecting the mine would thoroughly review the dust control parameters stipulated in the operator's approved ventilation or respirable dust control plan (applicable to surface mines and Part 90 miners) to determine if the parameters should be upgraded.

The process by which a violation of the applicable standard was to be abated by a mine operator remained unchanged. That is, an operator must first take corrective action to reduce the average dust concentration to within the permissible level, and then sample each production or normal work shift until five valid respirable dust samples are taken. MSHA considers a violation to be abated when the average dust concentration measured by these five valid samples was at or below the applicable standard. Under the ISSEP, MSHA inspectors sampled 1,662 MMUs and other entity types, such as roof bolter DAs and Part 90 miners, in underground mines; and some 860 DWPs and over 3,700 nondesignated work positions at surface mining operations. The Agency issued a total of 309 excessive dust citations based on the results of single, full-shift samples, involving 182 MMUs and 113 other underground entity types, and 14 surface work positions. Of the 1,662 MMUs sampled, 182 or 11 percent were cited, compared to the 27 percent MSHA had projected based on inspector sampling results for 1995. Also, it is important to point out that only 14 of the over 4,500 surface entities sampled were found to be out of compliance. These sampling inspections, which showed a significant decline in the number of cited instances of noncompliance compared to previous experience under the SIP and the earlier projections documented in the 1998 notices, reveal that mine operators are capable of maintaining dust concentrations at or below the applicable standard on every shift.

VI. Procedural and Litigation History of This Proposal

On February 18, 1994, the Secretary of Labor and the Secretary of Health and Human Services published a proposed

[3] MSHA plans to issue a revised Coal Mine Health Inspection Procedures Handbook after publication of this proposed standard as a final rule. The Handbook would list the CTVs.

Joint Notice of Finding in the **Federal Register** (59 FR 8357). The Joint Notice proposed to rescind the 1972 finding by the Secretaries of the Interior and Health, Education and Welfare, and instead, find that a single, full-shift measurement will accurately represent the atmospheric conditions with regard to the respirable dust concentration during the shift on which it was taken. Concurrently, MSHA published a separate notice in the **Federal Register** announcing its intention to use both single, full-shift measurements and the average of multiple, full-shift measurements for noncompliance determinations under the MSHA respirable coal mine dust program (59 FR 8356). That notice was published to inform the mining public of how the Agency intended to implement its new enforcement procedure utilizing single, full-shift samples, and to solicit public comment on the procedure.

After a notice and comment procedure extending over some three and one-half years, which also included three public hearings, the Agencies published a final corrected notice of finding in the **Federal Register** (63 FR 5664) on February 3, 1998.

The National Mining Association (NMA) along with the Alabama Coal Association petitioned the United States Court of Appeals for the 11th Circuit to review the 1998 Notice of Finding (Joint Finding) issued by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH), and additionally asked for an emergency motion for stay of the Joint Finding pending review. The motion for an emergency stay was denied by the Court.

On appeal NMA argued, among other things, that the agency had not met the requirements of section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act) (30 U.S.C. 811(a)(6)(A)) because it failed to address material impairment of health and economic and technological feasibility. MSHA and the Department of Labor responded that the agencies addressed the positive effect of the notice on miner health, and also concluded in the course of performing the analysis required under the Regulatory Flexibility Act that the economic impact of the Joint Finding was not significant. On September 4, 1998, the United States Court of Appeals for the 11th Circuit issued a decision in the case of *National Mining Association* v. *Secretary of Labor*, (153 F.3d 1264). The Court of Appeals vacated the Joint Finding and concluded that the agency was required to ''satisfy the requirements of Section 811(a)(6)'' by ''demonstrat[ing] that the new standard (a) adequately assures that no miner will suffer a material impairment of health, on the basis of the best available evidence; (b) uses the latest available scientific data in the field; (c) is feasible [in both an economic and technological sense]; and (d) is based on experience gained under the Mine Act and other health and safety laws,'' supra, at 1268–1269. The Court then concluded that ''the record contains no finding of economic feasibility,'' and that MSHA therefore ''failed to comply with Section 811(a)(6) of the Mine Act.'' MSHA asked the Court for a clarification of its decision by filing a Motion for Clarification. The Court, without opinion, denied the Secretary's motion on November 11, 1998.

MSHA and NIOSH understand the Court's ruling as requiring the Agencies to comply with all requirements under section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)). Therefore, in response to the Court's ruling, the Secretaries are proposing today to add a new mandatory health standard to 30 CFR part 72. Pursuant to section 202(f) of the Mine Act (30 U.S.C. 842(f)), the 1972 joint notice of finding would be rescinded and a new finding would be made that a single, full-shift measurement will accurately represent atmospheric conditions to which a miner is exposed during such shift. This finding is the basis for the new proposed mandatory health standard.

The Secretaries believe that single, full-shift measurements must be implemented into the MSHA coal mine respirable dust program as quickly as possible in order to better protect miners' health. Therefore, in order to speed the process of reproposing this critical measurement technique, the Secretaries are incorporating the record of the previous 1998 Joint Finding into the record for this proposal and adding appropriate new data and information to support this rulemaking under section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)). The Secretaries have used as much of the original wording as possible from the vacated final finding in this notice of proposed rulemaking. References to previous comments and commenters in the body of this proposal are meant to apply to previous comments received in response to the earlier proposed Joint Finding that was ultimately vacated by the U.S. Court of Appeals for the 11th Circuit.

VII. Health Effects

A. Introduction

Since the 1800s, occupational respiratory disease associated with working in a coal mine has been commonly referred to as ''Black Lung.'' As coal is mined, respirable-sized dust is generated. Depending upon the mine location and its geologic features, silica may also be present in the mine atmosphere. Dust in air that is breathed by miners has the potential to be deposited in their lungs. Some of this dust may be retained. Coal mine dust remaining in the lungs of miners for prolonged periods of time has the potential to result in respiratory diseases, sometimes even after occupational exposure to respirable coal mine dust has stopped. There is a clear and direct relationship between miners' cumulative exposures (*i.e.,* dose multiplied by the time exposed to the coal mine dust) to respirable coal mine dust and the severity of resulting respiratory conditions (as discussed more extensively, later in this section).

Diseases resulting from long-term retention of coal mine dust in the lung include chronic coal workers' pneumoconiosis (simple CWP), progressive massive fibrosis (PMF), silicosis, and chronic obstructive pulmonary disease (COPD) (*e.g.,* asthma, chronic bronchitis, emphysema). Historically, the medical term, ''pneumoconiosis'', has included simple CWP and PMF and their sub-categories. Chronic, or simple, CWP is partitioned into three levels of severity, proceeding from lowest to highest: Category 1, category 2, and category 3. Progressive Massive Fibrosis is similarly divided into three categories of increasing levels of severity: A, B and C.

Miners with simple CWP have a substantially increased risk of developing PMF. In the advanced stages of pneumoconiosis (*i.e.,* PMF), a significant loss of lung function may occur and respiratory symptoms (*e.g.,* breathlessness, wheezing) may persist. Miners are at risk of increased morbidity and premature mortality due to simple CWP, PMF and various other respiratory diseases.

Factors that are important in the development of simple CWP, PMF and COPD include the type of dust (*e.g.,* coal and/or silica), dust concentration (to which the miner was exposed), number of years of exposure, age of the miner (often measured as age at time of medical examination), and rank of the coal (the higher the rank the greater the risk).

In 1998, MSHA estimated that approximately 45,000 miners and

39,000 miners were employed at underground and surface coal mines, respectively (Mattos, 1999). A small percentage of the mining involved anthracite coal, the highest rank coal, while most involved bituminous coal which is a medium rank coal.

There are complementary data sources, described below, which provide estimates of the prevalence of occupational respiratory disease among coal miners. Together these data demonstrate the progress over the last thirty years in the reduction of occupational respiratory disease among coal miners, as well as the need for further action to reduce occupational lung disease among today's coal miners.

Estimates of the prevalence of simple CWP and PMF among the underground coal miners are gathered from the x-ray program, through which operators are required to provide miners the opportunity to be evaluated periodically for the presence of occupational lung disease, mandated pursuant to Section 203(a) of the Mine Act (30 U.S.C. 843(a)). However, miners are not required to participate. From 1970 to 1995,the prevalence of simple CWP and PMF among miners participating in the mandated x-ray program has dropped from 11 percent to 3 percent (MSHA, Internal Chart, 1998).

In accordance with 30 CFR part 50, those cases of occupational illnesses which both surface and underground coal mine operators learn of must be reported to MSHA. Under this requirement, mine operators reported 224 cases of pneumoconiosis (simple CWP and PMF, combined) in 1998 (Mattos, 1999). Of these, 138 cases occurred among coal miners who worked underground, while the remaining 86 cases occurred among surface coal miners (Mattos, 1999). There were also 14 cases of silicosis, eight in underground mines, reported to MSHA in 1998 in accordance with 30 CFR part 50 (Mattos, 1999). Since miners participate in both these programs at their own discretion, these data do not include the occupational health experience of all coal miners. The prevalence of occupational lung disease among participating miners may significantly differ from the prevalence among non-participants. Thus, the data from these programs may not be representative of the true magnitude of the prevalence of simple CWP and PMF among today's coal miners.

In the 1990s, MSHA conducted a series of one-time medical surveillance programs, in various regions of the country, to develop a more accurate estimate of the prevalence of simple CWP and PMF. Through these special programs, MSHA tried to minimize obstacles which may prevent some miners from either participating in or reporting to operators the results of respiratory diagnostic procedures. Nine geographical cohorts of miners, from around the country, were encouraged to participate in an independent x-ray program (MSHA, Internal Chart, 1999). These cohorts included eight active surface coal mining communities in the states of Pennsylvania, Kentucky and West Virginia, as well as the towns of Poteau, Oklahoma and Gillette, Wyoming. A ninth cohort included underground miners in Kentucky. The process was designed to encourage miner participation by providing for a greater degree of anonymity than may be available under the program provided by Section 203(a) of the Mine Act (30 U.S.C. 843(a)). Across the eight surface cohorts surveyed, the prevalence rate of simple CWP and PMF combined, among participants was 4.8%. The prevalence rate among the participating underground Kentucky miners was 9.2%.

Also, as part of its ongoing effort to ''end black lung now and forever,'' beginning in October 1999, MSHA implemented a pilot program to provide miners at both surface and underground mines with confidential health screening. Referred to as the ''Miners' Choice Health Screening'', the program addresses the key recommendations of the Secretary's Advisory Committee by (1) increasing participation toward the 85-percent level and (2) expanding the scope of the eligibility to include surface coal miners and surface coal mine independent contractors. The pilot program will operate separately from the existing Coal Workers' X-ray Surveillance Program administered by NIOSH. Since the Miners' Choice Health Screenings' inception, over 7,000 miners have been screened, with the participation rate in most areas exceeding 50 percent. With half of the x-rays taken during the first six months having been processed by NIOSH, preliminary results indicate a prevalence rate of approximately 2.25 percent.

The National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) are concerned about the prevalence of occupational lung disease among today's miners. Epidemiological studies from the U.S. and abroad have consistently shown that underground and surface coal miners are at risk of developing simple CWP, PMF, silicosis, and chronic obstructive pulmonary disease (NIOSH Criteria Document, 1995).

B. Hazard Identification

1. Agent: Coal

Coal is a fossil fuel derived from partial degradation of vegetation. Through its combustion, energy is produced which makes coal a valuable global commodity. It has been estimated that over one-third of the world uses energy provided by coal (Manahan, 1994). Approximately 1,800 underground and surface coal mines are in operation in the United States annually producing slightly over a billion short tons of coal (Mattos, 1999).

Coal may be classified on the basis of its type, grade, and rank. The type of coal is based upon the plant material (*e.g.*, lignin, cellulose) from which it originated. The grade of coal refers to its chemical purity. Although coal is largely carbon, it may also contain other elements such as hydrogen, oxygen, nitrogen, and sulfur. ''Hard'' coal refers to coal with a higher carbon content (*i.e.*, 90–95%) than ''soft'' coal (*i.e.*, 65–75%). Coal rank relates to geologic age, indexed by its fixed carbon content, down to 65%, and then by its heating value. Volatile matter varies inversely with the fixed carbon value. The most commonly described coal ranks include lignite (low rank), bituminous coal (medium rank), and anthracite (high rank) (Manahan, 1994).

2. Physical State: Coal Mine Dust

Aerosols are a suspension of solid or liquid particles in air (Mercer, 1973); they may be dusts which are solid particles suspended in the air. Coal dust may be freshly generated or may be re-suspended from surfaces on which it is deposited in mines. As discussed below, coal mine dust may be inhaled by miners, depending upon the particle size.

Coal mine dust is a heterogenous mixture, signifying that all coal particles do not have the same chemical composition. The particles are influenced by the type, grade, and rank of coal from which they were generated (Manahan, 1994). Irrespective of differences in coal characteristics, these dusts are water-insoluble, which is important biologically and physiologically. Unlike soluble dusts which may readily pass into the respiratory system and be cleared via the circulatory system, insoluble dusts may remain in the lungs for prolonged periods of time. Thus, a variety of cellular responses may result that could eventually lead to lung disease.

3. Biological Action: Respirable Coal Mine Dust

The principal route of occupational exposure to respirable coal mine dust occurs via inhalation. As a miner breathes, coal mine dust enters the nose and/or mouth and may pass into the mid airways (*e.g.*, bronchi, terminal bronchioles) and lower airways (*e.g.*, respiratory bronchioles, alveolar ducts).

Coal mine dust has a size distribution that is estimated to range between 1 and 100 micrometer (μm) (1 μm = 10^{-6} m) (Silverman, *et al.*, 1971). The size of coal particles is critical in determining the level of the respiratory tract at which deposition and retention occur (American Conference of Governmental Industrial Hygienists, 1999; American Industrial Hygiene Association, 1997).

Particles that are above 10 μm are largely filtered in the nasal passages, although some of these particles may reach the thoracic (or tracheal-bronchial) region of the lung (*e.g.*, 6% of 20 μm) (American Conference of Governmental Industrial Hygienists, 1999). Thus, there is evidence that ''oversized'' particles (*i.e.*, >10 μm) can move beyond the nose, deeper into the respiratory tract. Particles below 10 μm may easily move throughout the respiratory tract. As particle size decreases from 10 to 5 μm, however, there is greater penetration into the mid and lower regions of the lung. Particles that are approximately 1–2 μm are the most likely to be deposited in the lung (American Conference of Governmental Industrial Hygienists, 1999; Mercer, 1973). During mouth breathing, there may be a slight upward shift in the particle deposition curve such that 2–3 μm-sized particles are the most likely to be deposited in the respiratory tract (Heyder, *et al.*, 1986). Irrespective of nasal or mouth breathing, the potential respiratory tract penetration of particles whose size is approximately 10 μm or less is important because particles in the respirable size range deposit in the deep lung where clearance is much slower.

For the purposes of this rule, ''respirable dust'' is defined as dust collected with a sampling device approved by the Secretary of Labor and the Secretary of the Department of Health and Human Services (DHHS) in accordance with 30 CFR Part 74 (Coal Mine Dust Personal Sampler Units). In practice, the coal mine dust personal sampler unit has been used in the U.S. The particles collected with an approved sampler approximate that portion of the dust which may be deposited in the lung (West, 1990; 1992). It does not, however, indicate pulmonary retention (*i.e.*, those particles remaining in the lung). For those particles that are deposited in the lung, clearance mechanisms normally operate to assist in their removal. For example, within the thoracic (tracheal-bronchial) region of the lung, cilia (*i.e.*, hairlike projections) line the airways and are covered by a thin layer of mucus. They assist in particle clearance by beating rhythmically to project particles toward the throat where they may be swallowed, coughed, sneezed, or expectorated. This rhythmic beating action is effective in removing particles fairly quickly (*i.e.*, hours or days). Within the alveolar region of the lung, particles may be engulfed by pulmonary macrophages. These large ''wandering cells'' may remove particles via the blood or lymphatics. This process, unlike the movement of the cilia is much slower (*i.e.*, months or years). Thus, some particles, particularly those that are insoluble, may remain in the alveolar region for long periods of time, despite the fact that pulmonary clearance is not impaired. It is the pulmonary retention of coal mine dust which may be the impetus for respiratory disease.

It is also important to note that silica may be present in the coal seam, within dirt bands in the coal seam, and in rock above and below coal seams. Of the silica found in coal mines, quartz is the form which is found. Thus, quartz may become airborne during coal removal operations (Manahan, 1994). Miners may inhale dust that is a mixture of quartz and coal. MSHA is concerned with the inhalation of quartz since it may be deposited in the lungs of miners and produce silicosis. This is a restrictive lung disease which is characterized by a stiffening of the lungs (West, 1990; 1992). Silicosis has been seen in coal miners (*e.g.*, surface miners, drillers, roofbolters) (Balaan, *et al.*, 1993). Silicosis may develop acutely (*i.e.*, 6 months to 2 years) following intense exposure to high levels of respirable crystalline quartz. Silicosis has also been observed in coal miners following chronic exposure (*i.e.*, 15 years or more), but may be accelerated (*i.e.*, 7–10 years) in some cases (Balaan, *et al.*, 1993). Silicosis is irreversible and may lead to other illnesses and premature mortality. People with silicosis have increased risk of pulmonary tuberculosis infection and an increased risk of lung cancer (Althouse, *et al.*, 1995; International Agency for Research on Cancer, 1997). MSHA's current standard of 2.0 mg/m^3 for respirable coal dust requires that quartz levels be 5% or lower. Otherwise, the 2.0 mg/m^3 respirable coal dust exposure limit does not apply and must be adjusted downward for percentage of quartz. If coal dust contains more than 5% quartz, then the following formula is applied (30 CFR 70.101; 30 CFR 71.101).

Respirable dust standard (mg/m^3)= {(10 mg/m^3)/(%Quartz)}

The intent of this formula is to maintain miner exposures to quartz below 0.1 mg/m^3 (100 μg/m^3).

C. Health-Related Effects of Respirable Coal Mine Dust

1. Description of Major Health Effects

Consistently, epidemiological studies have demonstrated miners to be at risk of developing respiratory symptoms, a loss of lung function, and lung disease as a consequence of occupational exposure to respirable coal mine dust. As noted previously, risk factors include type(s) of dust, dust concentration, duration of exposure, age of the miner (often measured as age at time of medical examination), and coal rank.

a. Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF)

In earlier stages of pneumoconiosis the term, ''simple coal workers' pneumoconiosis'' (simple CWP), has been used, while in more advanced stages, the terms ''complicated CWP'' and PMF have been used interchangeably. Simple CWP and PMF involve the lung parenchyma and are produced by deposition and retention of respirable coal dust in the lung.

To determine if a miner has simple CWP or PMF, chest x-rays are taken and classified by a certified radiologist or reader. Opacities are identified on chest films and then classified using a scale of 0–3 (*e.g.*, simple CWP category 1), where higher category values indicate increasing concentration of opacities. In some instances, two category values may be given. For example, simple CWP category 2/3 signifies that the reader decided the film was category 2, but suspected that it might have been category 3. The International Labour Office (ILO) has provided a full description of the criteria for these classifications (ILO, 1980).

Simple CWP can be associated with a loss of lung function and with premature mortality (Morgan, *et al.*, 1974; Jacobsen, 1976; Cochrane, *et al.*, 1979; Parkes, 1982). MSHA recognizes that simple CWP increases the risk of developing PMF substantially (Cochrane, 1962; Jacobsen, *et al.*, 1971; McLintock, *et al.*, 1971; Balaan, *et al.*, 1993).

Progressive massive fibrosis (PMF) is associated with decreased lung function

and increased premature mortality (Rasmussen, *et al.*, 1968; Atuhaire, *et al.*, 1985; Miller and Jacobsen, 1985; Attfield and Wagner, 1992). Progressive massive fibrosis is also associated with increases in respiratory symptoms such as chest tightness, cough, and shortness of breath. Miners with PMF also have an increased risk of acquiring infections and pulmonary tuberculosis (Petsonk and Attfield, 1994; Yi and Zhang, 1996). Finally, miners with PMF have an increased risk of right-side heart failure (*i.e.*, cor pulmonale) (Cotes and Steel, 1987).

b. Other Health Effects

During a medical examination, a miner may be questioned by his physician about symptoms such as cough, phlegm production, chest tightness, shortness of breath, and wheezing. Occupational physicians may also conduct pulmonary function tests using spirometry or plethysmography. Pulmonary performance may be assessed via repeated measurements of lung volumes and capacities, such as the forced expiratory volume in one second (FEV_1), vital capacity (VC), forced vital capacity (FVC), residual volume (RV), and total lung capacity (TLC) (West, 1990; 1992). Changes in lung volumes and capacities may indicate a loss of the integrity of the lung (*i.e.*, respiratory system). More importantly, they can provide information for diagnosis of diseases affecting the airways and/or elasticity of the lung (*i.e.*, obstructive vs. restrictive lung disease) (West, 1990; 1992).

The term, chronic obstructive pulmonary disease (COPD), refers to three disease processes that are often difficult to properly diagnose and differentiate: chronic bronchitis, emphysema, and asthma (Coggon and Taylor, 1998; Garshick, *et al.*, 1996; West, 1990; 1992). As indicated by several studies, the exposure of miners to respirable coal mine dust place them at increased risk of developing COPD. Furthermore, COPD may occur in miners with or without the presence of simple CWP or PMF.

Chronic Obstructive Pulmonary Disease (COPD) is characterized by airflow limitations, and thus there is a loss of pulmonary function. As in simple CWP or PMF, a miner with COPD may have a variety of respiratory symptoms (*e.g.*, shortness of breath, cough, sputum production, and wheezing) and may be at increased risk of acquiring infections. Chronic Obstructive Pulmonary Disease is associated with increased premature mortality (Hansen, *et al.*, 1999; Meijers, *et al.*, 1997).

Briefly, in chronic bronchitis and in asthma, there is excess mucous secretion in the mid-lower airways (West, 1990; 1992). In contrast, emphysema is characterized by dilatation (enlargement) of alveoli that are distal to the terminal bronchioles, which leads to poor gas exchange (*i.e.,* poor transfer of oxygen and carbon dioxide). Additionally, there is a breakdown of the interstitium between the alveoli. These pathological changes may be confirmed upon autopsy. With asthma, the airflow limitations may be partially or completely reversible, while they are only partially reversible with chronic bronchitis and emphysema.

The Mine Safety and Health Administration (MSHA) and the NIOSH recognize that respiratory symptoms, loss of lung function, and COPD may impair the ability of a miner to perform his job and may diminish his quality of life. Additionally, miners having such health effects are at increased risk of morbidity (*e.g.,* from cardio-pulmonary disease, infections) and premature mortality.

2. Toxicological Literature

To better understand the human health effects of exposure to respirable coal mine dust and to more fully characterize the associated risks, it is important to consider data that have been obtained in animal based toxicological studies. To date, sub-acute studies (a study with a duration of 30 days, or less, in which multiple exposures of the same agent are given) and chronic studies (a study with a duration of more than 3-months, in which multiple exposures of the same agent are given) attempted to mimic miners' exposures. Inhalation was generally the route of exposure, although several studies have also employed instillation techniques (*i.e.,* a method which places a known quantity of dust into the trachea or bronchi).

Most recent toxicological studies have been short-term studies, largely focusing on ''lung overload'' (Snipes, 1996; Oberdorster, 1995; Morrow, 1988, 1992; Witschi, 1990), species-dependent lung responses (Nikula, *et al.,* 1997a,b; Mauderly, 1996; Lewis, *et al.,* 1989; Moorman, *et al.,* 1975), and particle size-dependent lung inflammation (Soutar, *et al.,* 1997). The data have shown that pulmonary clearance of particles may become impaired, potentially leading to inflammatory and other cellular responses in the lung. Although overloading has not been demonstrated in humans, the finding of reduced lung clearance among retired U.S. coal miners (Freedman and Robinson, 1988) is consistent with this possibility.

The data from Moorman, *et al.* (1975), Lewis, *et al.* (1989), and Nikula, *et al.* (1997a,b) are noteworthy for several reasons. First, these groups of investigators conducted chronic inhalation toxicity studies (*i.e.,* chronic bioassays). This is important since miners' exposures also occur via inhalation, and over a working lifetime. Secondly, the investigators used an exposure concentration of 2.0 mg/m^3 in their bioassays. As noted above, this is the current MSHA standard for respirable coal mine dust. Thirdly, the exposures involved nonhuman primates, whose responses are thought to closely mimic those of man. Some of the key findings of these studies included: deposition of coal dust in the animals' lungs, retention of coal dust in alveolar tissue, altered lung defense mechanisms, reduced pulmonary airflows, and hyperinflation of the lungs. One of the shortcomings of these studies is that complete dose-response relationships were not developed. However, at higher exposure concentrations, greater effects may be expected which is a basic tenet of toxicology. Thus, at exposure concentrations above 2.0 mg/m^3, MSHA and NIOSH believe that more severe obstructive lung disease may occur.

3. Epidemiological Literature

Epidemiology studies have consistently demonstrated the serious health effects of exposure to high levels of respirable coal mine dust (*i.e.,* above 2.0 mg/m^3) over a working lifetime. Table VII–1 lists epidemiology studies since 1986 whose results will be discussed on the basis of the type of observed health effect. Studies completed even earlier including the early work of Cochrane (1962), McLintock, *et al.* (1971), and Jacobsen, *et al.* (1971) demonstrated the adverse health effects (*e.g.,* simple CWP, PMF) of respirable coal mine dust in British coal miners.

Both early and recent studies have shown that the lung is the major target organ (*i.e.,* organ in which toxic effects occur) when exposure to respirable coal mine dust occurs. As seen in Table VII–1, numerous studies of miners have been conducted. Recent U.S. studies were conducted using data from one or more of the first four rounds of the National Study of Coal Workers' Pneumoconiosis (NSCWP), and have provided extensive data on miners' health. Many of these studies demonstrated that miners are at increased risk of multiple, concurrent respiratory ailments (Attfield and

Seixas, 1995; Kuempel, *et al.,* 1997; Meijers, *et al.,* 1997; Seixas, *et al.,* 1992).

TABLE VII–1.—RESPIRABLE COAL MINE DUST EPIDEMIOLOGICAL STUDIES, BY REPORTED OUTCOMES FROM 1986 TO PRESENT

Studies	Reported outcomes
Meijers, *et al.,* 1997	PMF, CWP, COPD, LLF.
Maclaren, *et al.,* 1989	PMF, CWP, LLF, RS.
Kuempel*, *et al.,* 1995	PMF, CWP, COPD.
Bourgkard *et al.,* 1998	PMF, CWP, LLF.
Kuempel*, *et al.,* 1997 Love, *et al.,* 1997 Love, *et al.,* 1992 Attfield and Morring*,1992b Attfield and Seixas*, 1995 Hodous and Attfield*, 1990 Hurley and Jacobsen, 1986 Hurley and Maclaren, 1987 Hurley, *et al.,* 1987 Starzynski, *et al.,* 1996 Yi and Zhang, 1996	PMF, CWP.
Wang, *et al.,* 1997	CWP, LLF.
Goodwin and Attfield*, 1998. Morfeld, *et al.,* 1997	CWP.
Marine, *et al.,* 1988 Seixas*, *et al.,* 1993 Soutar and Hurley, 1986	COPD, LLF, RS.
Carta, *et al.,* 1996 Henneberger and Attfield*,1997 Henneberger and Attfield*,1996 Seixas*, *et al.,* 1992	LLF, RS.
Attfield and Hodous*, 1992 Lewis, *et al.,* 1996	LLF.

COPD: Chronic obstructive pulmonary disease.
CWP: Simple coal workers' pneumoconiosis.
LLF: Loss of lung function.
PMF: Progressive massive fibrosis.
RS: Respiratory symptoms.
* Studies of U.S. Miners Who Participated in the National Study of Coal Workers' Pneumoconiosis (NSCWP).

a. Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF)

Studies following Cochrane (1962) and McLintock *et al.,* (1971) have confirmed that the risk of PMF increases with increasing category of simple CWP (Hurley and Jacobsen, 1986; Hurley, *et al.,* 1987; Hurley and Maclaren, 1988; Hodous and Attfield, 1990). However, the risk of PMF was greater than previously predicted among miners with simple CWP category 1 or without simple CWP (*i.e.,* category 0) (Hurley, *et al.,* 1987). The risk of PMF increased with increasing cumulative exposure, regardless of the initial category of simple CWP (Hurley, *et al.,* 1987), indicating that reducing dust exposures is a more effective means of reducing the risk of PMF than reliance on detection of simple CWP.

Attfield and Seixas (1995) have demonstrated a relationship between cumulative exposure to respirable coal mine dust and predicted prevalence of pneumoconiosis (*i.e.,* simple CWP, PMF). They studied a group of approximately 3,200 men who worked in underground bituminous coal mines. The U.S. miners and ex-miners had participated in Round 1 (1970–1972) or Round 2 (1972–1975) of the NSCWP and were examined again between 1985 and 1988. Chest x-rays were read to determine the number of cases of simple CWP and PMF. Dust exposure estimates were generated from measurements of dust concentrations as well as from work history. A logistic (or logit) regression model was used to estimate prevalence of simple CWP and PMF. In this statistical analysis, proportions are transformed to natural logarithmic values, *i.e.,* $y = 1n\ [p/(1-p)]$, before a linear model is fit to the data (Armitage, 1977). The logistic model assumes that the data have a binomial distribution (*e.g.,* presence or absence of PMF) for a given set of covariate values (*e.g.,* age, coal rank, dust exposure, pack-years of smoking). Using logistic modeling, relationships were developed between cumulative dust exposure and prevalence of simple CWP (category 1+, category 2+) and PMF. These relationships were the key strengths of the Attfield and Seixas study and serve as the basis for the Quantitative Risk Assessment of this rule.

The recent paper of Kuempel, *et al.,* (1997) has provided a detailed discussion and quantitative presentation of excess risks associated with respirable coal dust exposures. Their study was based upon results from previous studies of some 9,000 underground coal miners who participated in the NSCWP (Attfield and Morring, 1992b; Attfield and Seixas, 1995). Kuempel, *et al.,* estimated excess (exposure-attributable) prevalence of simple CWP and PMF (*i.e.,* number of cases of disease present in a population at a specified time, divided by the number of persons in the population at that specified time). Point estimates of excess risk of PMF ranged from 1/1000 to 167/1000 among miners exposed at the current MSHA standard for respirable coal mine dust. These estimates were based upon dust exposure that occurred over a miner's working lifetime (*e.g.,* 8 hours per day, 5 days a week, 50 weeks per year, over a period of 45 years). Actual occupational lifetime exposure may be more, due to extended work shifts and work weeks. The point estimates of PMF presented by Kuempel, *et al.,* (1997) were related to coal rank, where higher estimates (*e.g.,* 167/1000) were obtained for high-rank coal (anthracite coal) and somewhat lower estimates were obtained for medium/low rank bituminous coal (*e.g.,* 21/1000). Within each coal rank, the estimates of simple CWP cases were at least twice as high as those for PMF (*e.g.,* 167/1000 PMF vs. 380/1000 simple CWP≥1).

The data of Attfield and Seixas (1995) and Kuempel, *et al.,* (1995; 1997) were consistent with previous data of Attfield and Morring (1992b) who reported relationships between estimated dust exposure and predicted prevalence of simple CWP or PMF. They also noted that exposure-response relationships were steeper for higher ranks of coal such as anthracite, and concluded that the risks for anthracite miners appeared to be greater than for miners exposed to lower rank coal dust. Attfield and Morring (1992b) used similar methods as described above (*i.e.,* logistic modeling), but included miners from Round 1 of the NSCWP (1969–1971); thus representing an earlier time point in the NSCWP when the respirable coal mine dust concentrations were much higher than they are today.

Recently, Goodwin and Attfield (1998) reported that there were concerns regarding methodological inconsistencies across surveys given during the four rounds of the NSCWP. In particular, they noted the discordance in classification of simple CWP and PMF among readers of chest films. Despite potential discordance, Goodwin and Attfield (1998) have confirmed previous findings of a decline in simple CWP prevalence from 1969 to 1988. Yet, these analyses also demonstrated that simple CWP has not been eliminated. The Round 4 prevalence rates were 3.9 percent for simple CWP category 1 and higher, and 0.9 percent for category 2 and higher. This illustrates the need for continued efforts to reduce dust exposures.

Given the current system for monitoring exposures and identifying overexposures in the U.S., miners are at increased risk of developing simple CWP and PMF from a working lifetime exposure to respirable coal mine dust (Kuempel, *et al.,* 1997, 1995; Attfield and Seixas, 1995; Goodwin and Attfield, 1998; Attfield and Morring, 1992b). Whenever overexposures (*i.e.,* excursions above the applicable

standard) occur, the long-term mean exposure of miners may be increased, thereby causing an upward shift on the exposure-response curve. Such a shift then places these overexposed coal miners at increased risk of developing and dying prematurely from simple CWP and PMF.

The Attfield and Seixas epidemiological study (1995) is the most appropriate to use in estimating the benefit of reduction of overexposures. The authors applied scientific rigor to the collection, categorization, and analyses of the radiographic evidence for the group of 3,194 underground bituminous coal miners who participated in Round 4, 1985–1988, of the National Study of Coal Workers' Pneumoconiosis (NSCWP); this study population excludes 86 miners for whom there was missing exposure data or unreadable x-rays. Radiologic evidence was carefully collected and analyzed by multiple independent, NIOSH certified B readers to identify stages of simple CWP and PMF. In the targeted population of 5,557 miners, the participating miners (3,280) were similar to the non-participants (2,277) with regard to age at the first medical examination and prevalence of simple CWP category 1 or greater. The non-participants had worked slightly longer, yet had lower prevalence of simple CWP category 2 or greater, than the participants. This study describes the differences among current miners and ex-miners (health-related or job-related) in the relationships between the estimated cumulative exposure to respirable coal mine dust and prevalence of simple CWP category 1 or greater. Such data and relationships were not available in other U.S. studies and non-U.S. studies.

A potential limitation in the U.S. studies is the possible bias in the exposure data, which has been the subject of several studies (Boden and Gold, 1984; Seixas *et al.,* 1991; Attfield and Hearl, 1996). An advantage of the Attfield and Seixas 1995 study (and the earlier studies based on the same data set) is that the larger mines included in these epidemiological studies were shown to have exposure data with relatively small bias (Attfield and Hearl, 1996). Another limitation in exposure data used in the U.S. studies is that the airborne dust concentrations used to estimate individual miners' cumulative exposures to respirable coal mine dust were based on average concentrations within job category (these average values were combined with data of each individual miner's duration employed in a given job). The earlier U.S. exposure-response studies of miners participating in the first medical survey of the NSCWP (Attfield and Morring, 1992b; Attfield and Hodous, 1992; Kuempel, *et al.,* 1995) relied primarily on exposure measurements from a dust sampling survey during 1968–1969 to estimate miners' exposures before 1970 (Attfield and Morring, 1992a). An advantage of the Attfield and Seixas 1995 study is that, in addition to the pre-1970 exposure estimates, more detailed exposure data were available to estimate miners' exposures from 1970 to 1987, during which the mean airborne concentrations were stratified by mine, job, and year (Seixas, *et al.,* 1991).

The most complete exposure data available are those for coal miners in the United Kingdom (Hurley, *et al.,* 1987; Hurley and Maclaren, 1987; Soutar and Hurley, 1986; Marine, *et al.,* 1988; Maclaren, *et al.,* 1989). These studies include medical examinations and individual estimates of exposure for more than 50,000 miners for up to 30 years. The U.S. studies are consistent with these U.K. studies in demonstrating the risks of developing occupational respiratory diseases from exposure to respirable coal mine dust. These risks increase with increasing exposure concentration and duration, and with exposure to dust of higher ranked coal. The quantitative assessment of risk and associated benefits were based on the Attfield and Seixas (1995) study because, in addition to the advantages described above, it best represents the recent conditions experienced by miners in the U.S. This quantitative assessment follows in Section VIII. The international studies provide an important basis for comparison with the U.S. findings, and several of the recent international studies are described in detail here.

Bourgkard, *et al.,* (1998) conducted a 4-year study of a group of French coal miners who were employed in underground and surface mines. The investigators examined the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP and PMF. Bourgkard, *et al.,* (1998), through selection of a younger worker population (*i.e.,* 35–48 years old at start of study), attempted to focus on the early stages of simple CWP. In essence, they hoped to identify those miners who needed to be relocated to less dusty workplaces or who needed to be clinically monitored. Bourgkard, *et al.,* (1998) concluded that there was an association between cumulative dust exposure and what was termed chest x-ray ''worsening'' (*i.e.,* increase in reader-designated category signifying progression of simple CWP). Their conclusion, however, was based on pooling of the data (*i.e.,* three combined groups of miners) who had different cumulative exposures (*i.e.,* 20, 66 and 85 mg-yr/m^3).

Love, *et al.,* (1997, 1992) reported on occupational exposures and the health of British opencast (*i.e.,* surface or strip) coal miners. They studied a group of approximately 1,200 miners who were employed at sites in England, Scotland, and Wales. The mean age of the men was 41; many had worked in the mining industry since the 1970s. To determine dust exposure levels, full-shift personal samples were collected. Most were respirable dust samples which were collected using Casella cyclones according to the procedures described by the British Health and Safety Executive (HSE). Thus exposure determinations would be comparable to exposure determinations obtained in U.S. surface coal mines since both measure respirable dust according to the BMRC criteria.

These investigators found a doubling in the relative risk of developing profusion of simple CWP category 0/1 for every 10 years of work in the dustiest jobs in surface mines. These respirable coal dust exposures were under 1 mg/m^3. Love, *et al.,* (1992, 1997), like other investigators, emphasized the need for monitoring and controlling exposures to respirable coal mine dust, particularly in high risk operations (*e.g.,* drillers, drivers of bulldozers).

Meijers, *et al.,* (1997) studied Dutch coal miners who were examined between 1952 and 1963, and who were followed until the end of 1991. They reported an increased risk of mortality from simple CWP and PMF among miners who had generally worked underground for 20 or more years. Their conclusions were based upon dramatic increases in standardized mortality ratios (SMRs). There were several limitations in this study, however.

Morfeld, *et al.,* (1997) published a recent paper that investigated the risk of developing simple CWP in German miners and addressed the occupational exposure limit for respirable coal dust in Germany. Their study included approximately 5,800 miners who worked underground from the late 1970s to mid-1980s. Morfeld, *et al.,* observed increases in relative risks (RRs) of developing early x-ray changes, category 0/1, that were exposure-dependent. Relative risks (RRs) increased with higher dust concentrations.

Starzynski, *et al.,* (1996) conducted a mortality study on a group of 11,224 Polish males diagnosed with silicosis, simple CWP, or PMF between 1970 and 1985. This cohort was subdivided by occupation into four subcohorts: Coal miners (63%); employees of underground work enterprises (8%) (*i.e.,* drift cutting and shaft construction jobs); metallurgical industry and iron, and nonferrous foundry workers (16%); and refractory materials, china, ceramics and quarry workers. The investigators found that coal miners had a slight, statistically significant excess overall mortality (*i.e.,* all causes) as indicated by a Standardized Mortality Ratio (SMR) of 105 (with a 95% Confidence Interval (C.I.) of 100–110). Also, excess of deaths from diseases of the respiratory system among coal miners was nearly four times that of the referent population (SMR of 383 with a 95% C.I. of 345–424). The study of Starzynski, *et al.,* (1996) agrees with others that there is premature mortality among coal miners from simple CWP and PMF. Unfortunately, there is little or no information presented on miner work history, exposure assessment (*e.g.,* respirable coal mine dust, silica), and mine environment (*e.g.,* coal rank(s), underground vs. surface mining).

Yi and Zhang (1996) conducted a study to measure the progression from simple CWP to PMF or death among a cohort of 2,738 miners with simple CWP who were employed at the Huai-Bei coal mine in China. Relative risks (*i.e.,* RRs) were calculated for progression from simple CWP category 1 to simple CWP category 3 and for progression from simple CWP category 3 to death. Their results demonstrated that miners with simple CWP category 1 are at risk of developing simple CWP category 2 and simple CWP category 3 (*e.g.,* RRs of 1.101 and 2.360, respectively). They also found that miners with PMF had a decreased life expectancy. Other risk factors for development of PMF included long-term work underground, and drilling. This study was limited by a lack of exposure assessment, estimation of miner smoking histories, and use of a radiological classification system that differs from that of the ILO.

Hurley and Maclaren (1987) studied British coal miners who were examined between 1953 and 1978, over 5-year intervals. They have shown that exposure to respirable coal dust increases the risks of developing simple CWP and of progressing to PMF. As seen in their data analysis, these responses were dependent upon dust concentration and coal rank. That is, greater responses were seen at higher dust concentrations and with higher rank coal (*i.e.,* increasing per cent carbon). The investigators also noted that estimated risks were unaffected by changes in the proportion of miners with simple CWP who transferred jobs. The authors concluded that ''limiting exposure to respirable coal dust is the only reliable way of limiting the risks of radiological changes to miners.''

b. Other Health Effects

As noted in Table VII–1, there were 16 studies in which the loss of lung function (LLF) was examined in coal miners. Six of these studies also included an evaluation of respiratory symptoms (RS) in the miners. There were five studies describing chronic obstructive pulmonary disease (COPD) in miners.

Henneberger and Attfield (1997; 1996), Kuempel, *et al.* (1997), Seixas, *et al.,* (1993), Attfield and Hodous (1992), and Seixas, *et al.,* (1992) evaluated data from pulmonary function tests and standardized questionnaires to miners in the NSCWP. A common finding in their studies was an increase in respiratory symptoms such as cough, shortness of breath, and wheezing. The symptoms were dependent upon the dust concentration to which the miners had been exposed, with more pronounced symptoms occurring after long-term exposures to higher exposure levels. These studies also demonstrated that a loss of lung function occurred among miners.

Attfield and Hodous (1992) studied U.S. miners who had spent 18 years underground (on average) and who participated in Round 1 (1969–1971) of the NSCWP. They observed that greater reductions in pulmonary function were associated with exposure to higher ranks of coal (*i.e.,* anthracite vs. bituminous vs. lignite). Using linear regression models, Kuempel *et al.,* (1997) predicted the excess (exposure attributable) prevalence of lung function decrements among miners with cumulative exposures to respirable coal mine dust of 2 mg/m^3 for 45 years (*i.e.,* 90 mg-yr/m^3). The excess prevalence estimates were 315 and 139 cases per thousand for forced expiratory volume in one second (FEV_1) of <80% and <65% of predicted normal values, respectively, among never-smoking miners (a sub-group of 977 NSCWP participants studied in Seixas *et al.,* 1993). Such reductions in FEV_1 are clinically significant; FEV_1 <80% (of predicted normal values) is a measure that is used to determine ventilatory defects (American Thoracic Society, 1991). Three recent studies found impaired FEV_1 to be a predictor of increased pre-mature mortality (Weiss, *et al.,* 1995; Meijers, *et al.,* 1997; Hansen *et al.,* 1999).

Seixas, *et al.* (1993) conducted an analyses of 977 underground coal miners who began working in or after 1970 and were participants of both NSCWP Round 2 (1972–1975) and Round 4 (1985–1988). They found a rapid loss of lung function in miners and further declines in lung function with continuing exposure to coal mine dust. Collectively these studies have shown that the prevalence of decreased lung function was proportional to cumulative exposure. That is, with exposure to higher coal dust levels over a working lifetime, there were more miners who experienced a loss of lung function. Also, the types of respiratory symptoms and patterns of pulmonary function decrements observed by both Attfield and Hodous (1992) Seixas, *et al.* (1992;1993) are characteristic of COPD.

The U.S. findings on respiratory symptoms and loss of lung function in miners have agreed with those of previous British studies by Marine, *et al.,* (1988) and Soutar and Hurley (1986). Marine, *et al.*, (1988) analyzed data from British coal miners and focused their attention on respiratory conditions other than simple CWP and PMF. In particular, they examined the Forced Expiratory Volume in one second (FEV_1) among smoking and nonsmoking miners and, on the basis of reported respiratory symptoms, identified those miners with bronchitis. Using these data, logistic regression models were used to estimate the prevalence of chronic bronchitis and loss of lung function. Marine, *et al.,* concluded that both exposure to respirable coal mine dust and smoking independently cause decrements in lung function; their contributions to COPD appeared to be additive in coal miners.

Soutar and Hurley (1986) examined the relationship between dust exposure and lung function in British coal miners and ex-miners. The men who were studied were employed in coal mines in the 1950s and were followed up and examined 22 years later. These miners and ex-miners were categorized as smokers, ex-smokers, or nonsmokers. The Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and the FEV_1/FVC ratios decreased in all study groups and these reductions in lung function were inversely proportional to dust exposure. Thus, Soutar and Hurley concluded that exposure to respirable coal mine dust can cause severe respiratory impairment, even without the presence of simple CWP or PMF. They speculated that the pathology of coal dust-induced

lung disease differs from that induced by smoking.

Recent studies from China (Wang, *et al.,* 1997) and the European community (Bourgkard, *et al.,* 1998; Carta, *et al.,* 1996; Lewis, S., *et al.,* 1996) have also supported the British and U.S. findings which demonstrated the correlation between occupational exposure to coal dust and respiratory symptoms and loss of lung function in miners.

Wang, *et al.,* (1997) examined lung function in underground coal miners and other workers from several other factories in Chongqing, China. For their study, information was obtained on exposure duration, results of radiographic tests, and smoking history. Pulmonary function tests were performed, providing the Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and FEV_1/FVC data. Additionally, the diffusing capacity for carbon monoxide (DL_{CO}) was measured. This is an indicator of diffusion impairment at the ''blood-gas barrier'' which may occur, for example, when this barrier becomes thickened (West, 1990; 1992). Wang, *et al.,* (1997) found that there was impairment of pulmonary function among the coal miners and they had evidence of obstructive disease. Like other studies, such effects were observed among coal miners even in the absence of simple CWP. Pulmonary function was further decreased when simple CWP was present. This study did not provide exposure measurements and there was no consideration of exposure-response relationships. Also, silica exposures and their potential effects were not examined in the underground coal miners.

As noted above, Bourgkard, *et al.,* (1998) was interested in the earlier stages of simple CWP (*i.e.,* Categories 0/1 and 1/0) and the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP category 1/1 or higher. Over a 4-year period, they studied French coal miners who were employed in underground and surface mines. Bourgkard, *et al.,* (1998) found that, at the first medical examination, the ratio of the Forced Expiratory Volume in one second (FEV_1) to the Forced Vital Capacity (FVC) (*i.e.,* FEV_1/FVC) and other airflows determined from a forced expiration (West, 1990; 1992) were lower among miners who later developed simple CWP category 1/1 or higher. These miners also experienced more wheezing at the first medical examination. Thus, the results of their study suggested that lung function changes may serve as an early indicator of miners who are at increased risk of developing simple CWP and PMF and who should be monitored more closely.

Carta, *et al.,* (1996) have examined the role of dust exposure on the prevalence of respiratory symptoms and loss of lung function in a group of young Italian coal miners (*i.e.,* mean age at hire 28.9 years, mean age at first survey 31.2 years). These miners worked underground and were exposed to lignite (*i.e.,* low rank coal) which had a 5–7% sulfur content. They were followed for a period of 11 years, from 1983 and 1993. Carta, *et al.,* (1996) found few abnormalities on miner chest x-rays taken throughout the 11-year study. However, there was an increased prevalence of respiratory symptoms and loss of lung function. This was particularly noteworthy since dust exposures were often below 1.0 mg/m^3; the cumulative dust exposure for the whole cohort was 6.7 mg-yr/m^3 after the first survey. Thus, Carta, *et al.,* (1996) demonstrated that miners experience respiratory effects of exposure to dust generated from a lower rank coal and at lower concentrations. They have recommended yearly measurements of lung function for miners.

Lewis, *et al.,* (1996) studied a group of British miners, many of whom entered the coal industry in the 1970s. Based upon chest x-rays, the miners had no evidence of simple CWP or PMF. The objective of this study was to determine whether coal mining (*i.e.,* exposure to respirable coal mine dust) is an independent risk factor for impairment of lung function. Lewis, *et al.* (1996) found that there was a loss of lung function in miners (smokers and nonsmokers), particularly among miners who were under approximately 55 years of age. For miners who smoked, there was a greater loss of lung function than in nonsmoking miners with the same level of exposure to respirable coal mine dust. Above age 55, the loss of lung function was similar for miners and their controls, although all smokers continued to exhibit a greater loss of lung function than nonsmokers. Lewis, *et al.,* (1996) concluded that the deficits in lung function may occur in the absence of simple CWP and PMF, and independent from the effects of smoking.

There have been two recent mortality studies that have demonstrated a relationship between exposure to respirable coal mine dust and development of COPD. This association was reported by Kuempel, *et al.,* (1995) in the U.S., and by Meijers, *et al.* (1997) in the Netherlands. These two groups of investigators have reported that occupationally-induced COPD (*e.g.,* chronic bronchitis, emphysema) can occur in miners, with or without the presence of simple CWP or PMF. They also found that the risk of premature mortality from COPD was elevated among miners and could be separated from the effects of smoking and age.

Kuempel, *et al.* (1995) found an increase in relative risk (RR) of premature mortality from COPD among U.S. coal miners who participated in the NSCWP from 1969 through 1971. In their data analysis, the exposure-response relationship was evaluated using the Cox proportional hazards model. This model assumes that the hazard ratio between nonexposed and exposed groups does not significantly change with time. When fitting a curve to the data (*e.g.,* log-linear), cumulative exposure was expressed as a categorical or continuous variable. Due to model limitations (*e.g.,* less statistical power, influence of category scheme, use of lowest exposure group for comparisons vs. use of non-exposed group), Kuempel, *et al.* (1995) believed that the exposure data should be expressed as a continuous variable. If, for example, the cumulative exposure was 90 mg-yr/m^3 (*i.e.,* 2 mg/m^3 for 45 years), then the relative risk of mortality from chronic bronchitis or emphysema was 7.67. Kuempel, *et al.* (1995) also showed that relative risk decreased with lower cumulative exposures (*i.e.,* below 90 mg-yr/m^3) and increased with higher cumulative exposures (*i.e.,* above 90 mg-yr/m^3. Thus, these investigators demonstrated a statistically significant exposure-response relationship for COPD.

Meijers, *et al.* (1997) have shown, among Dutch miners, reductions in lung volumes and capacities are good predictors of the increased risk of premature mortality from COPD. For example, a diminished forced expiratory volume in one second (FEV_1) or a diminished ratio of the FEV_1 to the forced vital capacity[4] (FVC) (*i.e.,* FEV_1/FVC) upon medical examination was associated with a significantly increased standardized mortality ratio (SMR) for COPD (322 and 212, respectively). In other words, miners with diminished lung capacity based on FEV_1 were two to three times more likely to die prematurely due to COPD than miners who had normal lung function. In contrast, SMRs for COPD were not significantly increased in miners with normal lung volumes and capacities.

[4] Forced vital capacity (FVC) is the total volume of gas that can be exhaled with a forced expiration after a full inspiration; The vital capacity measured with a FVC may be less than that measured with a slower exhalation (West, 1992).

These data support prior conclusions of Seixas, *et al.* (1992, 1993) and Attfield and Hodous (1992) based on morbidity studies.

VIII. Quantitative Risk Assessment

As mentioned previously, in addition to this proposed notice of rulemaking, today's **Federal Register** contains another NPRM, Verification of Dust Control Plan (RIN 1219–AB18), ''plan verification.'' In combination, these rules present MSHA's strengthened plan to meet the Mine Act's requirement that a miner's exposure to respirable coal mine dust be at or below the applicable standard on each and every shift. MSHA's improved program to eliminate overexposures on each and every shift includes the simultaneous implementation of an improved tool to identify overexposures (*i.e.,* inspectors use of single, full-shift samples for noncompliance determinations) and a new regulation requiring operators implement verified ventilation plans in underground coal mines.

Having reviewed the reported health effects associated with exposure to coal mine dust, MSHA and NIOSH have evaluated the evidence to determine whether the current regulatory strategy can be improved. The criteria for this evaluation is established by the Mine Act under section 101(a)(6)(A) [30 U.S.C. 811(a)(6)(A)] which provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on Court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that must be addressed: (1) Whether health effects associated with the current pattern of overexposures on individual shifts constitute a material impairment to miner health or functional capacity; (2) whether the current pattern of overexposures on individual shifts places miners at a significant risk of incurring any of these material impairments; and (3) whether the proposed rules would substantially reduce those risks.

The criteria for evaluating the health effects evidence do not require scientific certainty. The need to evaluate risk does not mean that an agency is placed into a ''mathematical straightjacket.'' *See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607, 100 S.Ct 2844 (1980), otherwise known as the ''Benzene'' decision. When regulating on the edge of scientific knowledge, certainty may not be possible and,

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * * risking error on the side of overprotection rather than underprotection (Id at 656).

The statutory criteria for evaluating the health evidence do not require MSHA and NIOSH to wait for absolute certainty and precision. MSHA and NIOSH are required to use the ''best available evidence'' (section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)).

As explained earlier, MSHA's objective in strengthening the requirements for verifying the effectiveness of dust control plans, and in enforcing effective plans through the new enforcement policy proposed in this notice, is to ensure that no miner is exposed to an excessive concentration (*i.e.*, a concentration in excess of the applicable standard) of respirable dust on any individual shift. Annual inspector samples have demonstrated overexposures on individual shifts in many mines. Data compiled from the far more frequent, bimonthly, operator sampling program show that in many mines, the applicable dust standard is exceeded on a substantial percentage of the production shifts. This pattern has persisted for many years, and, since individual shift excursions above the applicable standard are permitted under the existing program, the same pattern can be expected to continue over the working lifetime of affected miners—unless an effort is made to eliminate excess exposures on individual shifts. In this quantitative risk assessment (QRA), MSHA will demonstrate that reducing coal mine dust concentrations, over a 45-year occupational lifetime, to no more than the applicable standard on just that percentage of shifts currently showing an excess, thereby lowering the cumulative exposure to respirable coal mine dust than would otherwise occur, would significantly reduce the risk of both simple CWP and PMF among miners. We have estimated the health benefits of the two rules arising from the elimination of overexposures on all shifts at only those MMUs exhibiting a pattern of recurrent overexposures on individual shifts.[5]

Based on 1999 operator data, there were 704 MMUs (out of 1,251 total) at which dust concentrations for the designated occupation (D.O.) samples exceeded the applicable standard on at least two of the sampling shifts (MSHA, Data file:Operator.ZIP).[6] MSHA considers these 704 MMUs, representing more than half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures.[7] Valid operator D.O. samples were collected on a total of 18,569 shifts at these 704 MMUs, and the applicable standard was exceeded on 3,977 of these shifts, or about 21.4 percent. For this 21.4 percent, the mean excess above the standard, as measured for the D.O. only, was 1.04 mg/m^3.

These results are based on a large number of shifts (an average of more than 26 at each of the 704 MMUs). Therefore, assuming representative operating conditions on these shifts, the results can be extrapolated to all production shifts, including those that were not sampled, at these same 704 MMUs. With 95-percent confidence, the overall percentage of production shifts on which the D.O. sample exceeded the standard was between 20.6 percent and 22.2 percent for 1999. At the same confidence level, again assuming representative operating conditions, the overall mean excess on noncompliant shifts at these MMUs was between 0.96 mg/m^3 and 1.12 mg/m^3. If operators tend to reduce production and/or increase dust controls on sampled shifts, as some commenters to the previous single, full-shift sample rulemaking and the Dust Committee have alleged, then the true values could be higher than even the upper endpoints of these 99-percent confidence intervals.

In 1998, MSHA attempted to enforce compliance on individual shifts. Therefore, to compare the 1999 pattern

[5] By ''exhibiting a pattern of recurrent overexposures,'' MSHA means that, at a 95-percent confidence level, the applicable standard is exceeded on at least six shifts per year.

[6] If a different definition of ''exhibiting a recurrent pattern of overexposures'' were used in these analyses the estimate of the reduction in risk and associated benefits would be different. For example, if the criterion were that four or more D.O. bimonthly exposure measurements exceeded the applicable standard then, with 95% confidence, at least 20 shifts would be overexposures in a year of 384 shifts. Using the four as the criterion, this would reduce the population for whom we are estimating benefits, and the estimated number of prevented cases would decrease by 19%.

[7] MSHA estimates an MMU average of 384 production shifts per year. Since mine operators are required to submit five valid designated operator (D.O.) samples to MSHA every two months, there would typically be 30 valid D.O. samples—representing 30 of the 384 production shifts—for each MMU that was in operation for the full year. If dust concentrations on two or more of the sampled shifts exceeded the standard, then it follows, at a 95-percent confidence level, that the standard was exceeded on at least six shifts over the full year.

of excess exposures on individual shifts to that of previous years under the current enforcement policy, MSHA examined the regular bimonthly D.O. sample data submitted to MSHA by mine operators in the eight years from 1990 through 1997. The same three parameters were considered as discussed above for 1999: (1) The percentage of MMUs exhibiting a pattern of recurrent overexposures, as indicated by at least two of the valid measurements above the applicable standard in a given year; (2) for those and only those MMUs exhibiting recurrent overexposures, the overall percentage of production shifts on which the D.O. was overexposed, as estimated by the percentage of valid measurements above the applicable standard; and (3) for the MMUs identified as exhibiting recurrent overexposures, the mean excess above the applicable standard, as calculated for just those valid measurements that exceeded the applicable standard in a given year.

Although MSHA found minor differences between individual years, there was no statistically significant upward or downward trend in any of these three parameters over the 1990–1997 time period (see Table VIII–1). In 1999, the percentage of MMUs exhibiting a pattern of recurrent overexposures (Parameter #1) was approximately 56 percent. Also in 1999, for those MMUs exhibiting a pattern of recurrent overexposures, the overall percentage of production shifts on which the D.O. was overexposed (Parameter #2) was approximately 21 percent. In 1999, the average excess above the applicable standard (Parameter #3) for MMUs exhibiting recurrent overexposures was 1.0 mg/m^3, a significant decrease from prior years. MSHA attributes this decrease to two important changes in the Agency's inspection program, beginning near the end of 1998. These changes, which both resulted in increased inspector presence, were: (1) An increase in the frequency of MSHA dust sampling at underground coal mines; and (2) initiation of monthly spot inspections at mines experiencing difficulty in maintaining consistent compliance with the applicable dust standard.

TABLE VIII–1.—1990–1997, DISTRIBUTION OF PARAMETERS OF ANNUAL OVEREXPOSURE TO RESPIRABLE COAL MINE DUST

1990–1997	Parameter #1 (Percent)	Parameter #2 (Percent)	Parameter #3 (mg/m^3)
Number of Years	8	8	8
Median	52.6	20.5	1.23
Mean (Standard Error)	50.9 (1.62)	20.6 (0.32)	1.25 (0.020)

Parameter #1: percentage of MMUs exhibiting a pattern of recurrent overexposures.
Parameter #2: for those MMUs exhibiting a pattern of recurrent overexposures, the percentage of production shifts on which the D.O. was overexposed.
Parameter #3: for those MMUs exhibiting a pattern of recurrent overexposures, the mean excess above the applicable standard among valid D.O. measurements that exceeded the applicable standard.

The available data suggest that unless changes are made to enforce the dust standard on every shift, the same average pattern of overexposures observed in 1999 will persist into the future. Therefore, we conclude that without the proposed changes:

- More than one-half of all MMUs would continue to have a pattern of recurrent overexposures on individual shifts;
- At those MMUs with recurrent overexposures, full-shift average respirable dust concentrations for the D.O. would continue to exceed the applicable standards on about 21 percent of all production shifts;
- Among those shifts on which D.O. exposure exceeds the applicable standards, the mean excess for the D.O. would continue to be approximately 1.0 mg/m^3.

We invite public comment on whether these three parameters, based on operators' regular 1999 bimonthly samples, under-represent or over-represent the frequency and/or magnitude of excessive dust concentrations on all individual shifts—including those that are not sampled.

If all overexposures on individual shifts are eliminated, the reduction in total respirable coal mine dust inhaled by a miner over a working lifetime will depend on the following factors: The average volume of air inhaled on each shift that would otherwise have exceeded the applicable standard, the degree of reduction in respirable dust concentration in the air inhaled on such shifts, and the number of such shifts per working lifetime. If a miner inhales ten cubic meters of air on a shift (U.S. EPA, 1980), reducing the respirable dust concentration in that air by 1.0 mg/m^3 would result in 10 mg less dust inhaled on that shift alone. Assuming the miner works 240 shifts per year, then reducing inhaled respirable dust by an average of 10 mg on 21 percent of the shifts would reduce the total dust inhaled by 504 mg per year, or nearly 22,700 mg over a 45-year working lifetime:

1.0 mg per m^3 of inhaled air
× 10 m^3 inhaled air per shift
× 50.4 affected shifts (*i.e.,* 21% of 240) per work year
× 45 work years per working lifetime
= 22,680 mg less dust inhaled per working lifetime.

The Secretaries invite comments on the health benefits expected from reducing the total coal mine dust inhaled over a working lifetime by this amount.

In Section VII, the strengths and weaknesses of various epidemiological studies were presented, supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material health impairment with respect to CWP and PMF. Two of the distinguishing qualities of this study are the dose-response relationship over a miners' lifetime and the fact that these data best represent the recent conditions experienced by miners in the U.S. Using this relationship, it is possible to evaluate the impact on risk of both simple CWP and PMF expected from bringing dust concentrations down to or below the applicable standard on every shift. This is the only contemporary epidemiological study of simple CWP and PMF providing such a relationship.

Attfield and Seixas used two or three B readers to identify the profusion of opacities using the ILO classification scheme. If three readings were available, the median value was used. If two readings were available, the higher of the two ILO categories was recorded. Eighty radiographs were eliminated because only one reading was available. The most inclusive category of CWP 1+ includes simple CWP, categories 1, 2, 3, as well as PMF. Category CWP 2+ does

not include simple CWP, category 1, but does include the more severe simple CWP categories, 2 and 3, as well as PMF. The third category used in their report was PMF, denoting any category of large opacities.

Attfield and Seixas (1995) provided logistic regression models for the prevalence for CWP 1+, CWP 2+ and PMF as a function of cumulative dust exposure, expressed as the product of dust concentration measured in the mine atmosphere and duration of exposure at that concentration. These models can be used to estimate the impact on miners' risk of both simple CWP and PMF of reducing lifetime accumulated exposure by eliminating excessive exposures on a given percentage of individual shifts.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures), bringing dust concentrations down to no more than the applicable standard on each and every production shift would reduce D.O. exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 21 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the D.O. level, by 0.22 mg-yr/m^3 over the course of a working year (*i.e.,* 21 percent of shifts in one year, times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected miner would, on average, amount to a reduction in accumulated exposure of approximately 10 mg-yr/m^3 (*i.e.,* 45 years times 0.22 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples currently submitted to MSHA tend to under-represent either the frequency or magnitude (or both) of individual full-shift excursions above the applicable standard, then eliminating such excursions would provide a lifetime reduction of even more than 10 mg-yr/m^3 for each exposed miner.

The Attfield and Seixas models predict the prevalence of CWP 1+, CWP 2+, and PMF for miners who have accumulated a given amount of exposure, expressed in units of mg-yr/m^3, by the time they attain a specified age. Benefits of reducing cumulative exposure can be estimated by calculating the difference between predictions with and without the reduction. For example, suppose a miner begins work at age 20 and retires at age 65. By the year of retirement, that miner is expected to accumulate nearly 10 mg-yr/m^3 less exposure if individual shift excursions are eliminated. For 65-year-old miners, reducing accumulated dust exposure by a total of 10 mg-yr/m^3 reduces the predicted prevalence of CWP 1+ by at least 11 per thousand (See Table VIII–2).

This 11 per thousand, however, applies only to miners of age 65. The Attfield and Seixas models provide different predictions for each year of age that a miner attains. The predicted benefit turns out to be smaller for younger miners and larger for older miners. This is partly because younger miners will have accumulated less exposure reduction from the proposed changes, and partly because the Attfield and Seixas models depend directly on age as well as on cumulative exposure. The health effects of recurrent overexposures can occur long after the overexposures occurred. Even after a miner retires and is no longer exposed to respirable coal mine dust, the extra risk attributable to an extra 10 mg-year/m^3, accumulated earlier, continues to increase with age. Consequently, the benefit to be gained from eliminating individual shift excursions also continues to increase after a miner is no longer exposed. For example, assuming no additional exposure after age 65, the predicted reduction in average prevalence of CWP1+ increases from 12 per thousand at age 65 to 17 per thousand at age 70. Presumably, the increasingly greater predicted reduction in risk of disease after age 65 is due to the latent effects of the reduction in earlier exposure.

To project the benefits of the two rules expected from eliminating overexposures on individual shifts, MSHA applied the Attfield and Seixas models to a hypothetical population of miners who, on average, begin working at age 20 and retire at age 65, assuming different lifetimes. The risks for three different ages have been presented to show a range of risk depending on the lifetime: 65, 73, and 80 years. During the 45 ''working years'' between 20 and 65, the lifetime benefit accumulates at a rate of 0.22 mg-yr/m^3 of reduced exposure per year, reaching a maximum of about 10 mg-yr/m^3 at age 65. Between ages 65 and 80, the accumulated reduction in dust exposure remains at an estimated average of 10 mg-yr/m^3, but the benefit in terms of both simple CWP and PMF risk continues to increase, as explained previously.

The expected lifetime for all American males conditional on their having reached 20 years of age, is 73 years (calculated from: U.S. Census March 1997, Table 18; U.S. Census March 1997, Table 119).[8] On average, the best estimate of the lifetime benefit to exposed miners is expressed by the reduction in prevalence of disease at age 73. Carrying out the calculation at a 73-year average lifetime, MSHA expects that, at the MMUs under consideration, bringing dust concentrations down to no more than the applicable standard on each shift will:

- Reduce the combined risk of simple CWP and PMF by at least 18.0 cases per 1000 affected D.O. miners;[9]
- Reduce the combined risk of simple CWP (category 2 and 3) and PMF by at least 9.8 cases per 1000 affected D.O. miners;
- Reduce the risk of PMF by at least 5.1 cases per 1000 affected D.O. miners.

Presented in the first row of Table VIII–2 are the average reductions in risk for simple CWP and PMF combined, and PMF alone, over an occupational lifetime, among affected D.O. miners who live to ages 65, 73, and 80, who have worked at an MMU exhibiting a pattern of recurrent overexposures. Across health outcomes, the benefit due to the predicted reduction in cumulative exposure to respirable coal mine dust, through limiting miners' exposure to no more than the applicable standard on each and every shift, increases with age.

When the dust concentration measured for the D.O. exceeds the applicable standard, measurements for at least some of the other miners may also exceed the standard on the same shift, though usually by a lesser amount. Furthermore, although the D.O. represents the occupation most likely to receive the highest exposure, other miners working in the same MMU may be exposed to even higher concentrations than the D.O. on some shifts. Therefore, in addition to the affected D.O. miners, there is a population of other affected miners who are also expected to experience a significant reduction in risk as a result of eliminating overexposures on their individual shifts.

To estimate how many miners other than the D.O. would be substantially affected, MSHA examined the results from all valid dust samples collected by MSHA inspectors in underground MMUs during 1999 (MSHA, Data file:Inspctor.zip). Within each MMU, the inspector typically takes one full-shift sample on the D.O. and, on the same shift, four or more additional samples representing other occupations.

[8] Since females have a greater life expectancy than males, expected benefits would increase if the proportion of female miners increases substantially in the future.

[9] ''affected D.O. miners'' include all miners who work at the 56-percent of MMUs under consideration and who are exposed to dust concentrations similar to the D.O. over a 45-year working lifetime.

On 896 shifts, at a total of 450 distinct MMUs, the D.O. measurement exceeded the applicable standard and there were at least three valid measurements for other occupations available for comparison. There was an average of 1.2 non-D.O. measurements in excess of the standard on shifts for which the D.O. measurement exceeded the standard.[10] For non-D.O. measurements that exceeded the standard on the same shift as a D.O. measurement, the mean excess above the standard was approximately (0.8 mg/m^3).[11]

Combining these results with the 21-percent rate of excessive exposures observed for the D.O. on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1.2 other miners, in addition to the one classified as D.O., is currently overexposed on at least 21 percent of all production shifts. Over the course of a working year, the reduction in exposure expected for these other miners is 0.17 mg-yr/m^3 (*i.e.,* 21 percent of one year, times 0.8 mg/m^3).

To assess the reduction in risk expected from eliminating all single-shift exposures for faceworkers experiencing lower exposures than the D.O., MSHA again applied the Attfield and Seixas models to miners who begin working at age 20, retire at age 65, assuming various lifetimes: 65, 73, and 80 years. This time, however, the resulting decrease in predicted prevalence was multiplied by 1.2/7 = 0.171, to reflect the fact that the assumed rate of overexposure applies, on average, to about 17 percent of the faceworkers not classified as the D.O.[12]

In the second row of Table VIII–2, we see that over an occupational lifetime, the beneficial average reduction in risk for simple CWP and PMF combined, and for PMF alone, increases with age. However, the magnitude of the risk reduction is smaller for the affected non-D.O.s than the affected D.O.s. This is expected because the estimated probability that a non-D.O. will be overexposed on a given shift is only 17 percent of the corresponding probability for the D.O. Based on this calculation for the MMUs under consideration, the predicted reduction in risk for faceworkers other than the D.O. who live an expected lifetime of 73 years is at least: 2.3 fewer cases of PMF or simple CWP, per thousand affected miners; 1.3 fewer cases of PMF or simple CWP, categories 2 or 3, per thousand affected miners; and 0.7 fewer cases of PMF per thousand affected miners.

Various data, assumptions and caveats were used to conduct the quantitative risk assessment. Therefore, we request any information which would enable us to conduct more accurate analyses of the estimated health benefits of the single, full-shift sample rule and plan verification rule, both individually, and in combination.

TABLE VIII–2.—BY AGE, AVERAGE REDUCTION IN RISK FOR OCCUPATIONAL RESPIRATORY DISEASE PER 1,000 AFFECTED UNDERGROUND COAL MINERS EXPECTED TO RESULT FROM IMPLEMENTATION OF SINGLE, FULL-SHIFT SAMPLING AND PLAN VERIFICATION RULES

Type of miner	Reduction in risk for occupational respiratory disease per 1,000 affected miners								
	Simple CWP[a] (categories 1, 2 or 3) or PMF[b]			Simple CWP (categories 2 or 3) or PMF			PMF		
	Age			Age			Age		
	65	73	80	65	73	80	65	73	80
Affected Designated Occupation Miners[c]	11.0	18.0	25.0	3.7	9.8	21.0	1.8	5.1	12.0
Affected Non-Designated Occupation Miners[d]	1.4	2.3	3.3	0.5	1.3	2.7	0.2	0.7	1.5

[a] Simple CWP: simple coal workers' pneumoconiosis.
[b] PMF: progressive massive fibrosis.
[c] Affected Designated Occupation (D.O.) Miners: includes all miners who work at the 56-percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the D.O., over a 45-year occupational lifetime.
[d] Affected Non-Designated Occupation (Non-D.O.) Miners: includes all underground faceworkers under consideration who are not classified as the D.O.

IX. Significance of Risk

The criteria for evaluating the evidence to determine whether these proposed standards improve the regulatory strategy for controlling exposures to respirable coal mine dust are established by the Mine Act pursuant to section 101(a)(6)(A) (30 U.S.C. 811(a)(6)(A))which provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on Court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that must be addressed: (1) Whether health effects associated with the current pattern of overexposures on individual shifts constitute a material impairment to miner health or functional capacity; (2) whether the current pattern of overexposures on individual shifts places miners at a significant risk of incurring any of these material impairments; and (3) whether the proposed rules would substantially reduce those risks.

The statutory criteria for evaluating the health evidence do not require MSHA and NIOSH to wait for absolute certainty and precision. MSHA and NIOSH are required to use the ''best available evidence'' (section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)). The need to evaluate risk does not mean that an agency is placed

[10] With 95-percent confidence, on shifts for which the D.O. measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 1.11.

[11] With 95-percent confidence, the mean excess is at least 0.72 mg/m^3.

[12] There are an estimated 7 non-D.O. miners for each D.O. miner, and an average of 1.2 of these 7 miners are overexposed.

into a ''mathematical straightjacket.'' *See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607, 100 S.Ct 2844 (1980), otherwise known as the ''Benzene'' decision. When regulating on the edge of scientific knowledge, certainty may not be possible and,

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data . . . risking error on the side of overprotection rather than underprotection (Id at 656).

We have taken steps in our quantitative risk assessment to conduct a balanced analysis using available data. Some of our assumptions were conservative, while others were not.[13]

In identifying the number and percentage of MMUs exhibiting a pattern of recurrent overexposures on individual shifts we choose to include only those MMUs with two or more 1999-operator bimonthly samples in excess of the applicable standard, rather than the population of MMUs with any overexposures.[14] Also, the quantitative risk assessment estimates of reduction in risk are averages across MMUs exhibiting a pattern of recurrent overexposures. For those miners who work at mines exhibiting a pattern of recurrent overexposures which differs from the one applied in the Quantitative Risk Assessment, their reduction in risk would be more than or less than the expected average, depending on whether or not their overexposures are at a higher or lower than average rate and intensity.

Another important decision impacting choice in this risk assessment involves the use of the traditional coal miner work schedule of 8-hours per day, 5-days per week, 48-weeks per year. Many of today's miners work longer hours per day, month, and year than the traditional work schedule. These longer work hours increase miners' cumulative exposure to respirable coal mine dust beyond the parameters of exposure used in our estimates of risk. Even so, to the extent that a proportion of miners may have a more limited work schedule (and occupational exposure), either in number of years, weeks per year, or hours per week, their expected health benefit would have to be adjusted downward, all other variables being constant.

Also, because of heavy, physical work, some miners may work at ventilatory rates in excess of the above-cited 10 cubic meters per 8-hour shift; an estimate of this ventilatory rate is 13.5 cubic meters per 8-hour shift (ICRP, 1994). The sub-population of miners with higher breathing rates would inhale more respirable coal mine dust than would otherwise occur given the same environmental exposures, thereby increasing their risks for the development of simple CWP and PMF.

In the Quantitative Risk Assessment, to estimate average reduction in exposure, we chose the best available data sets: 1999 operator bimonthly samples for D.O.s and N.D.O.s., respectively. Currently, both operator bimonthly and inspector samples[15] may be taken on production shifts that may not reflect typical production levels.[16] Although other factors may mediate the amount of airborne respirable dust such as, ventilation and water sprays, on average, higher production is correlated with increased quantities of airborne respirable coal mine dust (Webster, *et al.,* 1990; Haney, *et al.,* 1993; Green, *et al.,* 1994). Some previous commenters and the Dust Advisory Committee have alleged that operators tend to reduce production and/or increase dust controls on sampled shifts. Based on MSHA's and NIOSH's experience and expertise, and previous comments, we believe the production levels observed on sampling shifts are indeed lower than typical (See discussion in Benefits section). We also believe at some MMUs, more engineering controls at higher levels of efficacy are used during sampling shifts than on the majority of shifts (See discussion in Benefits section). Thus, it is reasonable to conclude that the number of MMUs exhibiting a pattern of recurrent overexposures is greater than the 704 captured in this Quantitative Risk Assessment. Furthermore, the severity and rate of overexposures to respirable coal mine dust among the 704 MMUs exhibiting a pattern of recurrent overexposures are probably also greater than we have estimated. We have derived our best estimate of the risk reduction using the best available data. Yet due to limitations in these data, we believe that we have underestimated the magnitude and frequency of typical respirable coal mine exposures. To the extent that our values underestimate the true reduction in respirable coal mine dust exposures, we have underestimated the benefits of these rules.

Other aspects of our risk assessment methodology reflect more conservative choices including the selection of an occupational lifetime of 45-years. Various factors may affect the consistency of the type and duration of jobs miners hold and hence their associated cumulative exposure levels. For example, some miners who lose their jobs upon mine closure are employed by other mines, sometimes in less-exposed jobs. Some miners may chose to move from job to job over their careers at underground coal mines, sometimes preferring positions away from the mining face. Moreover, if the trend of increasing mechanization continues, there will be fewer miners, and for some of them, their occupational lifetimes will be shorter.

For reasons already explained, we believe these choices are appropriate for this risk assessment. We also recognize that use of the most conservative approach at every step of the risk assessment analysis could produce mathematical risk estimates which, because of the additive effect of multiple conservative assumptions, may overstate the likely risk. We believe this QRA for simple CWP and PMF strikes a reasonable balance based on available data. To the extent that we may have underestimated the magnitude of overexposures which would be prevented, we believe the actual benefits to be greater than we have estimated.

It should be noted that reductions in the prevalence of simple CWP and PMF attributable to eliminating individual shift overexposures are not expected to materialize immediately after the overexposures have been substantially reduced or eliminated. Because these diseases typically arise after many years of cumulative exposure, allowing for a period of latency, the beneficial effects of reducing exposures are expected to become evident only after a sufficient time has passed that the reduction in cumulative exposure could have its effect. The total realized benefits would not be fully evident until after the youngest of today's underground coal miners retire.

Finally, even standing alone without simultaneously requiring that mine

[13] In the context of the field of risk assessment, a ''conservative'' assumption is one that results in an estimate of more protection for workers than a less conservative assumption would. Therefore, estimated benefits are greater under assumptions that are ''conservative'' in this sense.

[14] By ''exhibiting a pattern of recurrent overexposures,'' means that, at a 95-percent confidence level, the applicable standard is exceeded on at least six shifts per year.

[15] Valid MSHA inspector samples require production to be at least 60-percent of the average production for the last 30-days. Valid operator bimonthly samples must be taken on a normal production shift (*i.e.,* a production shift during which the amount of material produced in a MMU is at least 50 percent of the average production reported for the last set of five valid samples) (30 CFR 70.101).

[16] Therefore assuming representative operating conditions on these shifts, in our QRA the results were extrapolated to all production shifts, including those that were not sampled, at those same 704 MMUs.

operators verify the effectiveness of their mine ventilation plans, the proposed standard allowing MSHA to use single, full-shift samples to identify overexposures requiring corrective action would provide miners with health benefits (See detailed discussion in Quantitative Risk Assessment). Both the prospect of being cited for overexposures and actual issuance of additional citations due to this rule would serve to compel mine operators to be more attentive to the level of respirable dust in their mines. Therefore, it is reasonable to expect, over time, a further decline in the number of shifts during which the concentration of respirable coal mine dust is at or above the applicable standard. Thus, the use of full-shift single samples will in and of itself, on average, lower miners' cumulative exposure to respirable coal mine dust. Since cumulative exposure to respirable coal mine dust is the main determinant in the development of both simple CWP and PMF, the Agencies are confident that the use of single, full-shift samples, by itself, and even without the impact of a verified dust control plan, would result in better health protection to miners (Jacobsen, *et al.,* 1977; Hurley, *et al.,* 1987; Kuempel, *et al.,* 1995; Attfield and Morring, 1992; Attfield and Seixas, 1995).

While there may be some concern from mine operators that the use of single, full-shift samples could dramatically increase the number of MSHA citations for overexposure to respirable coal mine dust, MSHA's 1998 Interim Single-Sample Enforcement Policy (ISSEP) has demonstrated that mine operators can maintain coal mine dust concentrations at or below the applicable standard.

As discussed in greater detail later in this notice, under ISSEP (May 7, 1998–September 9, 1998), of the 1,662 MMUs sampled, 182 or 11 percent were cited and only 14 of the 4,600 surface entities sampled were found to be out of compliance.

The anticipated increase in MSHA citations due to the use of single full-shift sampling would be the result of identifying overexposures which the current method of sampling masks due to the averaging of samples. Such overexposures and their prospective medical impact on the health of miners has been the subject of a Federal Mine Safety and Health Review Commission case which was affirmed by the Court of Appeals. *Consolidation Coal Co.* v. *Secretary of Labor,* 5 FMSHRC 378 (March 1983), *aff'd,* 8 FMSHRC 890 (June 1986), 824 F.2d 1071 (D.C. Cir. 1987).

In affirming an MSHA citation designated as ''significant and substantial'' under Section 104(a) of the Mine Act based on a mine operator's bimonthly dust samples which had an average concentration of respirable dust of 4.1 milligrams per cubic meter of air, the Commissioner quoted the administrative law judge who explained in detail the potentially damaging health effects of respirable coal mine dust:

> It is clear that the exposure covered by the dust samples which resulted in the citation herein *in itself* would neither cause nor significantly contribute to chronic bronchitis or coal workers pneumoconiosis. It is also clear that longer exposure to the same dust levels can in a significant number of instances cause or significantly contribute to chronic bronchitis or to coal workers pneumoconiosis. There is no question that chronic bronchitis and coal workers' pneumoconiosis are illnesses ''of a reasonably serious nature.'' There is no question that each unit of exposure time is important in contributing to the disease. I think it would be illogical and unrealistic to hold that a serious disease results from a long series of insignificant and unsubstantial exposures. Dr. Hodous testified that the disease results from ''an aggressive accumulation of dust and every drop in the bucket hurts.'' How much the drop will hurt may depend in part on the status of the bucket when the drop falls. If the bucket is full or nearly full, the drop may cause it to overflow. If a miner has worked 20 or 30 years in an underground coal mine, a 2 month exposure to excessive dust may be enough to cause the first signs of coal workers' pneumoconiosis, or to transform simple pneumoconiosis to a complicated form of the disease and possibly lead to progressive massive fibrosis. If the bucket is empty when the drop falls, in itself it won't mean much. If the miner exposed to excessive dust for a 2-month period is a new miner with healthy lungs, he probably will not be adversely affected, if his exposure stops. But if the exposure continues for 20 years (six 2-month periods each year), that miner too will be at risk to contract black lung.
>
> I conclude that *every drop in the bucket,* every two month sampling period where excessive dust is present, significantly and substantially contributes to a health hazard—the hazard of contracting chronic bronchitis or coal workers' pneumoconiosis. (emphasis added)

Consolidation Coal, 5 FMSHRC at 389–90 (citations omitted) (footnotes omitted). *See also Consolidation Coal,* 8 FMSHRC at 897 (''There is no dispute, however, that overexposure to respirable dust can result in chronic bronchitis and pneumoconiosis.'') and *Consolidation Coal,* 824 F.2d at 1086 (using the legislative history of the Mine Act and the administrative law judge's ''drop in the bucket'' analogy to strike down the mine operator's argument that ''no single violation of the respirable dust standard could ever be designated as significant and substantial.'').

While *Consolidation Coal, supra,* dealt with overexposures identified under the operator sampling program, it is obvious that overexposures identified from the MSHA inspector sampling program similarly affect a miner's cumulative exposure to respirable coal mine dust.

Thus, the same analogy would apply to overexposures identified through single, full-shift exposures. MSHA and NIOSH firmly believe that noncompliance determinations based on single, full-shift measurement will improve working conditions for miners because mine operators will be compelled either to implement and maintain more effective dust controls to minimize the chances of being found in noncompliance by an MSHA inspector, or to take corrective actions to lower those dust concentrations that are shown to be in excess of the applicable standard.

To the extent that the use of single, full-shift samples reduce a miner's cumulative exposure to respirable coal mine dust, as compared to the current method of dust sampling, it reduces a miner's risk of developing occupational respiratory disease. The proposed mandatory standard would provide for fewer drops in each miner's exposure bucket. The health benefit that each miner receives from this rule will vary depending on ''how full their bucket is'' when the rule is implemented as well as other mediating factors, such as the percentage of quartz and rank of the coal.

Yet, all miners, irrespective of their cumulative exposure to respirable coal mine dust, would benefit by having fewer drops (*i.e.,* shifts with overexposures to respirable coal mine dust) placed in their buckets over the course of each miner's working life because this reduction would reduce their occupational hazard—the risk of developing simple CWP or PMF. Therefore, the Agencies reiterate that health benefits would accrue to miners due to single, full-shift sample rule alone even in the absence of a regulatory requirement for a verified dust control plan at each underground coal mine.

X. Issues Regarding Accuracy of a Single, Full-shift Measurement

Some previous commenters questioned the accuracy of single, full-shift measurements, and challenged the Secretaries' assessment of measurement accuracy. Some commenters questioned the Secretaries' interpretation of section 202(b) of the Mine Act (30 U.S.C.

842(b)), while others agreed with the interpretation. The following issues were generally raised: The measurement objective as defined by the Mine Act; the definition of the term ''accurately represent'', as used in section 202(f) (30 U.S.C. 842(f)); the validity of the sampling process; measurement uncertainty and dust concentration variability; and the accuracy of a single, full-shift measurement.

A. Measurement Objective

Some previous comments reflected a general misunderstanding of what the Secretaries intend to measure with a single, full-shift measurement, *i.e.,* the measurement objective. For example, some previous commenters asserted that the dust concentration that should be measured is dust concentration averaged over a period greater than a single shift. Some previous commenters noted that dust concentrations can vary during a shift and that dust concentrations are not uniform throughout a miner's work area. In order to clarify the intent of the Secretaries, the explanation that follows describes the elements of the measurement objective and how the measurement objective relates to the requirements of section 202(f).

To evaluate the accuracy of a dust sampling method, it is necessary to specify the airborne dust to be measured, the time period to which the measurement applies, and the area represented by the measurement. Once specified, these items can be combined into a measurement objective. The measurement objective represents the goal of the sampling and analytical method to be utilized.

1. The Airborne Dust to be Measured

Section 202(f) of the Mine Act (30 U.S.C. 842(f)) states that ''average concentration'' means

> * * * a determination [*i.e.,* measurement] which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed * * *

The phrase ''atmospheric conditions'' is used to refer to the concentration of respirable dust. Therefore, the airborne dust to be measured is respirable dust. Section 202(e) defines the concentration of respirable dust as the dust measured by an approved device.

2. Time Period to Which the Measurement Applies

Section 202(b)(2) provides that each mine operator ''* * * shall continuously maintain the average concentra tion of respirable dust in the mine atmosphere during each shift to which each miner *; * * is exposed'' at or below the applicable standard. In section 202(f) ''average concentration'' is defined as an atmospheric condition measured ''over a single shift only, unless * * * such single shift measurement will not, after applying valid statistical techniques, accurately represent such atmospheric conditions during such shift.''

Some previous commenters argued that Congress intended that the measurement objective be a long-term average. Specifically, some of these commenters stated that because coal dust exposure is related to chronic health effects, the exposure limit should be applied to dust concentrations averaged over a miner's lifetime. These commenters identified the measurement objective as being the dust concentration averaged over a long, but unspecified, term and argued that a single, full-shift measurement cannot accurately estimate this long-term average.

If the objective of section 202(b) were to estimate dust concentration averaged over a lifetime of exposure, then the Secretaries would agree that a single, full-shift sample, or even multiple samples collected during a single inspection, would not provide the basis for an accurate measurement. Section 202(b) of the Mine Act (30 U.S.C. 842(b)), however, does not mention long-term averaging, rather it explicitly requires that the average dust concentration be continuously maintained at or below the applicable standard during *each shift* (emphasis added). Furthermore, in *Consolidation Coal Company* v. *Secretary of Labor* 8 FMSHRC 890, (1986), aff'd 824 F.2d 1071, (D.C. Cir. 1987), the Commission found that each episode of a miner's overexposure to respirable dust significantly and substantially contributes to the health hazard of contracting chronic bronchitis or coal workers' pneumoconiosis, diseases of a fairly serious nature.

If exposure is limited on each shift, then this will ensure that a miner's total lifetime exposure will not be excessive. In the context of the proposed finding, the Secretaries have determined that ''atmospheric conditions'' means the fluctuating concentration of respirable coal mine dust during a single shift. These are the atmospheric conditions to which a miner at the sampling location would be exposed. Therefore, the proposed finding pertains only to the accuracy in representing the average of the fluctuating dust concentration over a single shift.

3. Area Represented by the Measurement

The Mine Act gives the Secretary of Labor the discretion to determine the area to be represented by respirable dust measurements collected over a single shift. Section 202(a) of the Mine Act (30 U.S.C. 842(a)) refers to ''the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed'' measured ''* * * at such locations * * *'' as prescribed by the Secretary of Labor. It is sufficient for the purposes of the Mine Act that the sampler unit accurately represent the amount of respirable dust at such locations only. As articulated by the United States Court of Appeals for the 10th Circuit in *American Mining Congress (AMC)* v. *Marshall*, 671 F.2d 1251 (1982), the Secretary of Labor may place the sampler unit in any area or location ''* * * reasonably calculated to prevent excessive exposure to respirable dust.''

Some previous commenters submitted evidence that dust concentrations can vary significantly near the mining face, and that these variations may extend into areas where miners are located. That is, the average dust concentration over a full shift is not identical at every point within a miner's work area. These commenters submitted several bodies of data purporting to show significant discrepancies between simultaneous dust concentration measurements collected within a relatively small distance of one another. Several previous commenters maintained that the measurement objective is, or should be, to accurately measure the average concentration within some arbitrary sphere about the head of the miner, and that multiple measurements within this sphere are necessary to obtain an accurate measurement.

The Secretaries recognize that dust concentrations in the mine environment can vary from location to location, even within a small area near a miner. As mentioned earlier, the Mine Act does not specify the area that the measurement is supposed to represent, and the sampler unit may therefore be placed in any location, reasonably calculated to determine excessive exposure to respirable dust.

Because the Secretary of Labor intends to prevent excessive exposures by limiting dust concentrations at every location in the active workings, it is sufficient that each measurement accurately represent the respirable dust concentration at the corresponding sampling location only. Limiting the dust concentration at every such location ensures that no miner in the

active workings will be exposed to excessive respirable dust.

Several previous commenters suggested that the measurement objective should be a miner's ''true exposure'' or what the miner actually inhales. The Secretaries do not intend to use a single, full-shift measurement to estimate any miner's ''true exposure,'' because no sampling device can exactly duplicate the particle inhalation and deposition characteristics of a miner at any work rate (these characteristics change with work rate), let alone at the various work rates occurring over the course of a shift. Limiting the respirable dust concentration at every location in the active workings to which miners are exposed ensures that the respirable dust concentration actually inhaled by any miner is limited.

4. Justification for the Proposed Measurement Objective

A number of previous commenters identified the dust concentration to be estimated as either the mean dust concentration over some period greater than an individual shift, the mean dust concentration over some spatially distributed region of the mine, or a ''grand mean'' consisting of some combination of the above. These comments were based on the premise that the measurement objective should be something other than the average atmospheric conditions during a single shift at the sampling location. It is true that the mean quantities described by some commenters cannot accurately be estimated using a single, full-shift measurement, but the Secretaries make no claim of doing so, nor do they believe that a broader measurement objective would be desirable for enforcement purposes.

The Secretaries believe that MSHA's proposed use of single, full-shift samples for enforcement purposes would eliminate an important source of sampling bias due to averaging, as explained in Appendix A. Under MSHA's existing enforcement procedures, measurements made at the dustiest occupational locations or during the dustiest shifts sampled are diluted by averaging them with measurements made under less dusty conditions. This practice has frequently caused failures to cite clear cases of excessive dust concentration. Therefore, the Secretaries believe that enforcement based on averaging does not provide miners with the greatest level of protection possible under the current exposure limit for respirable coal mine dust.

Some previous commenters proposed that MSHA continue to average at least five separate measurements prior to making a noncompliance determination. They stated that abandoning this practice would reduce the accuracy of noncompliance determinations. Several of these commenters maintained that the average of dust measurements obtained at the same occupational location on different shifts more accurately represents dust exposure to a miner than a single, full-shift measurement. These commenters argued that not averaging measurements would reduce accuracy to unacceptable levels.

Other previous commenters agreed with MSHA and NIOSH that the averaging of multiple samples can dilute and mask specific instances of overexposure. Some of these commenters stated that averaging not only distorts the estimate of dust concentration applicable to individual shifts, but also biases the estimate of exposure levels over a longer term. According to these commenters, this is because dust control measures and work practices affecting dust concentrations are frequently modified in response to the presence of an MSHA inspector over more than a single shift. These commenters argued that the presence of the MSHA inspector causes the mine operator to be more attentive to dust control than normal.

Section 202(b) of the Mine Act currently requires each mine operator to ''continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner is exposed'' at or below the applicable standard. The greater the variation in mining conditions from shift to shift, the less likely it is that a multi-shift average will reflect the average dust concentration to which a miner is exposed on any individual shift. Appendix A contains further discussion of this issue.

Accordingly, the Secretaries would define the measurement objective to be the accurate determination of the average concentration of respirable dust at a sampling location over a single shift.

B. Accuracy Criterion

A ''single shift measurement'' means the calculated dust concentration resulting from a valid single, full-shift sample of respirable coal mine dust. In reviewing the various issues raised by previous commenters, the Agencies found that the term ''accurately represent,'' as used in section 202(f) (30 U.S.C. 842(f)) in connection with a single shift measurement, was not defined in the Mine Act. Therefore, on March 12, 1996, (61 FR 10012), the Secretaries proposed to apply an accuracy criterion developed and adopted by NIOSH in judging whether a single, full-shift measurement will ''accurately represent'' the full-shift atmospheric dust concentration. The NIOSH Accuracy Criterion requires that measurements come within 25 percent of the corresponding true dust concentration at least 95 percent of the time (Kennedy, *et al.,* 1995). MSHA and NIOSH again are proposing to use the NIOSH Accuracy Criterion.

One previous commenter opposed the application of the NIOSH Accuracy Criterion since it ignores environmental variability. For reasons explained above, the Secretaries have restricted the measurement objective to an individual shift and sampling location. Therefore, environmental variability beyond what occurs at the sampling location on a single shift would not be relevant to assessing measurement accuracy.

For over 20 years, the NIOSH Accuracy Criterion has been used by NIOSH and others in the occupational health professions to validate sampling and analytical methods. This accuracy criterion was devised as a goal for the development and acceptance of sampling and analytical methods capable of generating reliable exposure data for contaminants at or near the Occupational Safety and Health Administration's (OSHA) permissible exposure limits.

OSHA has frequently employed a version of the NIOSH Accuracy Criterion when issuing new or revised single substance standards. For example, OSHA's benzene standard provides: ''[m]onitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of benzene'' (29 CFR 1910.1028(e)(6)). Similar wording can be found in the OSHA standards for vinyl chloride (29 CFR 1917), arsenic (29 CFR 1918), lead (29 CFR 1925), 1,2-dibromo-3-chloropropane (29 CFR 1044), acrylonitrile (29 CFR 1045), ethylene oxide (29 CFR 1047), and formaldehyde (29 CFR 1048). Note that for vinyl chloride and acrylonitrile, the accuracy criterion for the method is ±35 percent at 95 percent confidence at the permissible exposure limit.

Some previous commenters contended that the NIOSH Accuracy Criterion does not conform with international standards recently adopted by the European Committee for Standardization (CEN) (European Standard No. EN 482, 1994). Contrary to these assertions, the NIOSH Accuracy Criterion not only conforms to the CEN criterion but is, in fact, more stringent.

The CEN criterion requires that 95 percent of the measurements fall within ±30 percent of the true concentration, compared to ±25 percent under the NIOSH criterion. Consequently, any sampling and analytical method that meets the NIOSH Accuracy Criterion will also meet the CEN criterion. Furthermore, EN 482 imposes no control over inaccuracy in the measurement of sampling and analytical accuracy itself.

The NIOSH Accuracy Criterion is relevant and widely recognized and accepted in the occupational health professions. Further, previous commenters proposed no alternative criteria for accuracy. Accordingly, for purposes of section 202(f) of the Mine Act (30 U.S.C.842(f)), the Secretaries would consider a single, full-shift measurement to ''accurately represent'' atmospheric conditions at the sampling location, if the sampling and analytical method used meets the NIOSH Accuracy Criterion.

Several commenters suggested that method accuracy should be determined under actual mining conditions rather than in a laboratory or in a controlled environment. Although the NIOSH Accuracy Criterion does not require field testing, it recognizes that field testing ''does provide further test of the method.'' However, in order to avoid confusing real differences in dust concentration with measurement errors when testing is done in the field, ''precautions may have to be taken to ensure that all samplers are exposed to the same concentrations'' (Kennedy, *et al.*, 1995). Similarly, the CEN criterion for method accuracy specifies that ''testing of a procedure shall be carried out under laboratory conditions.'' (European Standard No. EN 482, 1994)

To determine, so far as possible, the accuracy of its sampling and analytical method under actual mining conditions, MSHA conducted 22 field tests in an underground coal mine. To provide a valid basis for assessing accuracy, 16 sampler units were exposed to the same dust concentration during each field test using a specially designed portable chamber. The data from these field experiments were used by NIOSH in its ''direct approach'' to determining whether or not MSHA's method meets the long-established NIOSH Accuracy Criterion. (See section X.E.2. of this notice).

In response to the March 12, 1996 notice, a commenter claimed that the supplementary information and analyses introduced into the public record by that notice addressed the precision of a single, full-shift measurement rather than its accuracy. According to this commenter, by focusing on precision, important sources of systematic error had been overlooked. The Secretaries agree with the comment that precision is not the same thing as accuracy. The accuracy of a measurement depends on both precision and bias (Kennedy, *et al.*, 1995). Precision refers to consistency or repeatability of results, while bias refers to a systematic error that is present in every measurement. Since the NIOSH Accuracy Criterion requires that measurements consistently fall within a specified percentage of the true concentration, the criterion covers both precision and uncorrectable bias.

Since the amount of dust present on a filter capsule used by an MSHA inspector is measured by subtracting the pre-exposure weight from the post-exposure weight, any bias present in both weight measurements is mathematically canceled out by subtraction. Furthermore, as will be discussed later, a control (*i.e.*, unexposed) filter capsule has been and would continue to be pre- and post-weighed along with the exposed filter capsules. The weight gain of the exposed capsule would be adjusted by the weight gain or loss of the control filter capsule. Therefore, any bias that may be associated with differences in pre-and post-exposure laboratory conditions, or with changes introduced during storage and handling of the filter capsules would also be mathematically canceled out. Moreover, the concentration of respirable dust is effectively defined by section 202(e) of the Mine Act (30 U.S.C. 842(e)) and the implementing regulations in 30 CFR parts 70, 71, and 90 to be whatever is measured with an approved sampler unit after multiplication by the MRE-equivalent conversion factor prescribed by the Secretary of Labor. Therefore, the Secretaries would conclude that the improved sampling and analytical method is statistically unbiased. This means that such measurements contain no systematic error. It should also be noted that since any systematic error would be present in all measurements, measurement bias would not be reduced by making multiple measurements. Other comments regarding measurement bias are addressed in Appendix B.

For unbiased sampling and analytical methods, a standard statistic—called the coefficient of variation (CV)—is used to determine if the method meets the NIOSH Accuracy Criterion. The CV, which is expressed as either a fraction (*e.g.*, 0.05) or a percentage (*e.g.*, 5 percent), quantifies measurement accuracy for an unbiased method. An unbiased method meets the NIOSH Accuracy Criterion if the ''true'' CV is no more than 0.128 (12.8 percent). However, since it is not possible to determine the true CV with 100-percent confidence, the NIOSH Accuracy Criterion contains the additional requirement that there be 95-percent confidence that measurements by the method will come within 25 percent of the true concentration 95 percent of the time. Stated in mathematically equivalent terms, an unbiased method meets the NIOSH Accuracy Criterion if there is 95-percent confidence that the true CV is less than or equal to 0.128 (12.8 percent).

C. Validity of Sampling Process

A single, full-shift measurement of respirable coal mine dust is obtained with an approved sampler unit, which is either worn or carried by the miner directly to and from the sampling location and remains operational during the entire shift or for eight hours, whichever time is less. A portable, battery-powered pump draws dust-laden mine air at a flow rate of 2 liters per minute (L/min) through a 10-mm nylon cyclone, a particle-size selector that removes non-respirable particles from the airstream. Non-respirable particles tend to be removed from the airstream by the nose and upper respiratory airways. Such particles fall to the bottom of the cyclone body called the ''grit pot,'' while smaller, respirable particles (of the size that would normally enter into the lungs) pass through the cyclone, directly into the inlet of the filter cassette. This airstream is directed through the pre-weighed filter leaving the particles deposited on the filter surface. This collection filter is enclosed in an aluminum capsule to prevent leakage of sample air around the filter and the loss of any dust dislodged due to impact. The filter capsule is sealed in a protective plastic enclosure, called a cassette, to prevent contamination. After completion of sampling, the filter cassette is sent to MSHA's Respirable Dust Processing Laboratory in Pittsburgh, Pennsylvania, where it is weighed to determine the weight gain in milligrams or the amount of dust collected on the filter surface. The concentration of respirable dust, expressed as milligrams per cubic meter (mg/m3) of air, is determined by dividing the observed weight gain by the volume of mine air passing through the filter and then multiplying this quantity by a conversion factor (discussed in Appendix B) prescribed by the Secretaries.

Some previous comments generally addressed the quality and reliability of the equipment used for sampling.

Specific concerns were expressed about the quality of filter cassettes and the reliability of sampling pumps used by MSHA inspectors, due to their age and condition. Other commenters questioned the effect of sampling and work practices on the validity of a sample.

The validity of the sampling process is an important aspect of maintaining accurate measurements. Since passage of the Coal Act, there has been an ongoing effort by MSHA and NIOSH to improve the accuracy and reliability of the entire sampling process. In 1980, MSHA issued new regulations revising sampling, maintenance and calibration procedures in 30 CFR parts 70, 71, and 90. These regulatory provisions were designed to minimize human and mechanical errors and ensure that samples collected with approved sampler units in the prescribed manner would accurately represent the full-shift, average atmospheric dust concen tration at the location of the sampler unit. These provisions require: (1) Certification of competence of all individuals involved in the sampling process and in maintaining the sampling equipment; (2) calibration of each sampler unit at least every 200 hours; (3) examination, testing, and maintenance of units before each sampling shift to ensure that the units are in proper working order; and (4) checking of sampler units during sampling to ensure that they are operating properly and at the proper flow rate. In addition, significant changes, such as robotic weighing and the use of electronic balances were made in 1984, 1994, and 1995 that improved the reliability of sample weighings at MSHA's Respirable Dust Processing Laboratory. These changes are discussed below in section X.C.3.

All of these efforts improved the accuracy and reliability of the sampling process since the time of the 1971/1972 proposed and final findings. A discussion follows concerning the three elements which constitute the sampling process: sampler unit performance, collection procedures, and sample processing.

1. Sampler Unit Performance

In accordance with the provisions of section 202(e) of the Mine Act (30 U.S.C. 842(e)), NIOSH administers a comprehensive certification process under 30 CFR part 74 to approve dust sampler units for use in coal mines. To be approved for use, a sampler unit must meet stringent technical and performance requirements governing the quantity of respirable dust collected and flow rate consistency over an 8-hour period when operated at the prescribed flow rate. As necessary, NIOSH also conducts performance audits of approved sampler units purchased on the open market to determine if the units are being manufactured in accordance with the specifications upon which the approval was issued.

The system of technical and quality assurance checks currently in place is designed to prevent a defective sampler unit from being manufactured and made commercially available to the mining industry or to MSHA. In the event that these checks identify a potential problem with the manufacturing process, established procedures require immediate action to correct the problem.

In 1992, NIOSH approved the use of new tamper-resistant filter cassettes with features that enhanced the integrity of the sample collected. A backflush valve was incorporated into the outlet of the cassette, preventing reverse airflow through the filter cassette, and an internal flow diverter was added to the filter capsule, reducing the possibility of dust dislodged from the filter surface from falling out of the capsule inlet.

Also, in 1999, based on recent MSHA studies, Kogut, *et al.* (1999), involving the weighing stability of the current filter design and in an effort to standardize the manufacturing process, the filter cassette manufacturer submitted for NIOSH approval a modification to the current design. The change involves replacing the Tyvek'' support pad with a stainless steel wheel, similar to the one located on the inlet side of the collection filter. A similar modification was incorporated in sampling filters employed by OSHA over the past several years. Upon NIOSH approval, the new cassette would be used in MSHA inspector sampling, thereby improving the stability of sample weights.

Several previous commenters questioned the quality of the filter cassettes used in the sampling program, expressing concern as to whether the cassettes always meet MSHA specifications. These concerns primarily involve filter-to-foil distance and floppiness of the filters, which are manufacturing characteristics specific to filters and filter capsules, not related to part 74 performance requirements. The Secretaries believe that such characteristics would have no effect on the accuracy of a single, full-shift measurement because, unlike the part 74 requirements, they would not affect the amount of dust deposition.

Previous commenters also questioned the condition of sampling pumps used by MSHA inspectors, stating that many of the pumps are 10 to 20 years old and are not maintained as well as they could be. They claimed that the age and condition of these pumps call into question not only whether the sampling equipment could meet part 74 requirements if tested, but also the accuracy of the measurement.

MSHA believes that this concern is unwarranted, since in 1995, MSHA replaced all pumps in use by inspectors with new constant-flow pumps that incorporate the latest technology in pump design. These pumps provide more consistent flow throughout the sampling period. In addition to using new pumps, inspection procedures require MSHA inspectors to make a minimum of two flow rate checks to ensure that the sampler unit is operating properly. A sample is voided if the proper flow rate was not maintained during the final check at the conclusion of the sampling shift. In fiscal year 1998, only 151 samples or 0.4 percent of the 37,042 inspector samples processed were voided because the sampling pump either failed to operate throughout the entire sampling period or failed to maintain the proper flow rate during the final check. Units found not meeting the requirements of part 74 are immediately repaired, adjusted, or removed from service. Nevertheless, MSHA recognizes that as these pumps age, deterioration of the performance of older pumps could become a concern. However, there is no evidence that the age of the equipment affects its operational performance if the equipment is maintained as prescribed by 30 CFR parts 70, 71, and 90.

Some previous commenters suggested that the accuracy of a dust sample may be compromised when a miner is operating equipment, due to vibration from the machinery. The potential effect of vibration on the accuracy of a respirable dust measurement was recognized by NIOSH in 1981. An investigation, supported by NIOSH, was conducted by the Los Alamos National Laboratory which found that vibration has an insignificant effect on sampler performance (Gray and Tillery, 1981).

2. Sample Collection Procedures

MSHA regulations at 30 CFR parts 70, 71, and 90 prescribe the manner in which mine operators are to take respirable dust samples. The collection procedures are designed to ensure that the samples accurately represent the amount of respirable dust in the mine atmosphere to which miners are exposed on the shift sampled. Samples taken in accordance with these procedures are considered to be valid.

Several previous commenters questioned the effects of sampling and work practices on the validity of a sample. Instances were cited where the sampling unit was accidentally dropped, with the potential for the sample to become contaminated. Previous commenters also pointed out that work activities requiring crawling, duck walking, bending, or kneeling could cause the sampling hose to snag. Such activities could also cause the sampling head assembly to be impacted or torn off a person's garment, possibly contaminating the sample. These commenters stated that sampler units are sometimes treated harshly while being worn by miners, mishandled when being transferred from one miner to another, or handled casually at the end of a work shift.

These commenters also maintained that it is impossible for MSHA inspectors or mine operators to continuously observe collection of a sample in order to ensure its validity, and that, for this reason, the reliability and accuracy of the sampling equipment, when used under actual mining conditions, is not the same as when tested and certified in a laboratory. Averaging multiple samples would, according to these commenters, provide some ''leeway'' in the system, by reducing the impact of an aberrant sample.

While MSHA and NIOSH would agree that it is not possible to continuously observe the collection of each sample, MSHA inspectors are normally in the general vicinity of the sampling location, and therefore would have knowledge of the specific conditions under which samples are taken. In addition, MSHA inspectors are instructed to ask miners wearing the sampler units whether anything that could have affected the validity of the sample occurred during the shift. If so, the inspector would note this on the data card and request that the sample be examined to determine its validity.

Other previous commenters expressed concern that, if special dust control measures are in effect during sampling, a single, full-shift measurement may fail to represent atmospheric conditions during shifts when samples are not collected. The Secretaries believe that this concern is beyond the scope of this new proposal, which, as described in the discussion of measurement objective, deals solely with the accuracy of a measurement in representing atmospheric conditions on the shift being sampled. One previous commenter recommended that MSHA, NIOSH, or the Bureau of Mines (now a part of NIOSH) should evaluate the need for standardizing the MSHA respirable dust sampling procedures. In fact, the procedures for respirable dust sampling have already been standardized under the revised 1980 MSHA regulations codified at 30 CFR parts 70, 71 and 90.

As previously mentioned, as part of the ISSEP discussion, MSHA inspectors are also using unexposed control filters to eliminate any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules. A control filter is an unexposed filter that was pre-weighed on the same day as the filter used for sampling. This control filter is used to adjust the weight gain obtained on each exposed filter. Any change in weight of the control filter is subtracted from the change in weight of each exposed filter. MSHA began using control filters on May 7, 1998, with the implementation of the ISSEP, and has continued this practice, even after reverting back to basing noncompliance determinations on an average of multiple samples following the ruling of the 11th Circuit Court of Appeals discussed earlier. The control filter, which is carried by the inspector in a shirt or coverall pocket during the sampling inspection, is plugged to prevent exposure to the mine environment. The experience gained from the use of control filters under ISSEP is discussed in section V.D.

Also, once NIOSH approves the modified design mentioned earlier, MSHA inspectors would use only filters incorporating a stainless steel support wheel. These filters, according to MSHA studies, demonstrated better weighing stability as compared to filters employing Tyvek® material for the support pad.

3. Sample Processing

Sample processing consists of weighing the exposed and control (unexposed) filters, recording the weight changes, and examining certain samples in order to verify their validity. Sample processing also includes electronic transmission of the results to MSHA's MIS center where dust concentrations are computed. The results are then transmitted to MSHA enforcement personnel and to mine operators.

(a) Weighing and Recording Procedures

The procedures and analytical equipment, as well as the facility used by MSHA to process respirable coal mine dust samples have been continuously improved since 1970 to maintain a state-of-the-art laboratory. From 1970 to 1984, samples were manually weighed using semimicro balances. This process was automated in 1994 with the installation of a state-of-the-art robotic system and electronic balances, which increased the precision of sample-weight determinations. Weighing precision was further improved in 1994, when both the robotic system and balances were upgraded. Also, beginning in early 1998, all respirable coal mine dust samples were being processed in a new, specially designed clean room facility that maintains the temperature and humidity of the environment at 72 ±2°F and 50 ±5%, respectively. Using a modified HEPA filtration system, the environment is maintained at a clean room classification of 1000 (near optimum for clean room cleanliness).

The full benefit of the 1994 improvements of the weighing system for inspector samples was, however, not attained until mid-1995, when MSHA implemented two modifications to its procedures for processing inspector samples. One modification involved pre- and post-weighing filter capsules to the nearest microgram (0.001 mg) within MSHA's laboratory. Prior to mid-1995, filters had been weighed in the manufacturer's (Mine Safety and Appliances Co.) laboratory before sampling, and then in MSHA's laboratory after sampling. MSHA is currently pre-weighing all such filters in its own laboratory. To maintain the integrity of the weighing process, eight percent of all filters are systematically weighed a second time. If a significant deviation is found, the balance is recalibrated and all filters with questionable weights are reweighed.

The other modification was to discontinue the practice of truncating (to 0.1 mg) the recorded weights used in calculating dust concentrations. This means that MSHA is now using all significant digits associated with the weighing capability of the balance (0.001mg) when processing inspector samples. These modifications improved the overall accuracy of the measurement process.

To eliminate the potential for any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filters, MSHA is also using control filters in its enforcement program. Any change in the weight of the control filter is subtracted from the measured change in weight of the exposed filter.[17]

Since MSHA began pre- and post-weighing filters to the nearest μg, coal

[17] If a control filter either shows a weight gain greater than 100 micrograms (μg) or a weight loss greater than 30 μg, the control filter is voided and the concentration measurement(s) are not used for enforcement purposes.

mine operators have asked to use filters pre-weighed to a μg to collect optional samples that they submit to MSHA for quartz analysis. The use of these pre-weighed filters would eliminate the need to sample multiple shifts in order to obtain sufficient dust mass on the collection filter for quartz analysis. Currently, filters used by coal mine operators to sample in accordance with 30 CFR parts 70, 71, and 90 are pre-weighed by the filter manufacturer, Mine Safety Appliances Co., to the nearest 10 μg. Therefore, only samples taken with filters preweighed to the nearest 10 μg, with a net weight gain of at least 450 μg, contain sufficient dust mass to permit the percentage of quartz to be determined.

In 1996, Mine Safety Appliances Company upgraded their equipment used to pre-weigh filter capsules and now uses the same balance as MSHA's Coal Dust Processing Laboratory, thereby permitting weight determinations to be made to the nearest μg.

The requirement that inspector samples be pre- and post-weighed in the same laboratory was developed prior to adopting control filters and was based on the assumption that no control filters were being used. Since use of the control filters adjusts for differences that may exist in laboratory conditions on the days of pre- and post-weighing, it is no longer necessary to pre- and post-weigh the filters in the same laboratory.

To determine the viability of using exposed filters pre-weighed by Mine Safety Appliances Co. and post-weighed by MSHA in establishing the percentage of quartz, the Agency conducted a study to quantify weighing variability between the Mine Safety Appliances Co. and MSHA laboratories (Parobeck, *et al.*, 1997). Based on this study, the overall imprecision of an interlaboratory weight-gain measurement was estimated to be 11.5 for capsules with a stainless steel filter support pad. This estimate closely matches the 11.6 result reported for capsules with stainless steel support pads in a more recent study (Kogut, *et al.*, 1999). In this more recent study, unexposed capsules were pre-weighed by MSHA, assembled into cassettes by Mine Safety Appliances Co., sent out to the field and carried during an inspection, and then post-weighed by MSHA.''

Using the higher of these two estimates, NIOSH has reassessed the accuracy of MSHA's improved sampling and analytical method, which incorporates a control filter adjustment and employs filter capsules with a stainless steel support pad. NIOSH has concluded that the control filter adjustment will correct for any potential biases due to differences in laboratory conditions, so that it is no longer necessary to pre- and post-weigh filter capsules in the same laboratory (Grayson, 1999b). Therefore, in accordance with NIOSH, MSHA is proposing to change the existing processing procedures for inspector samples from pre- and post-weighing in the same laboratory (with adjustment by a control filter) to pre- and post-weighing of samples to the nearest μ in different laboratories (with continued adjustment by a control filter). The Agencies would welcome comments on this proposed change.

To insure the precision and accuracy of the pre-weight of filters used by inspectors, MSHA plans to institute a program to monitor the daily production of filters weighed to the nearest μg by the manufacturer. The program will conform to MIL–STD–105D, which defines the criteria currently used to monitor the quality of pre-weighed filters used in MSHA's operator sampling program.

(b) Sample Validity Checks

All respirable dust samples collected and submitted as required by 30 CFR parts 70, 71, and 90 are considered valid unless the dust deposition pattern on the collection filter appears to be abnormal or other special circumstances are noted that would cause MSHA to examine the sample further. Several previous commenters expressed concern about the potential contamination of samples with ''oversized particles.'' Such contamination, according to one commenter, can result in aberrational weight gains. These commenters noted that current procedures do not systematically ensure that samples collected by MSHA contain no oversized particles. It was recommended that MSHA analyze, for the presence of oversized particles, any dust sample that exceeds the applicable dust standard. Also suggested for such an analysis was any sample with a weight gain significantly different from other samples taken in the same area.

Standard laboratory procedures, involving visual, and microscopic examination as necessary, are used to verify the validity of samples. Samples with a weight gain of 1.4 milligrams (μg) or more are examined visually for abnormalities such as the presence of large dust particles (which can occur from agglomeration of smaller particles), abnormal discoloration, abnormal dust deposition pattern on the filter, or any apparent contamination by materials other than respirable coal mine dust. Also examined are samples weighing 0.1 mg or less for insufficient dust particle count. Similar checks are also performed in direct response to specific inspector or operator concerns noted on the dust data card to which each sample is attached.

The previous commenters' concerns about the contamination of samples with oversized particles are based on the assumption that all oversized particles, defined as dust particles greater than 10 micrometers (μm) in size, are not respirable and therefore should be totally excluded from any sample taken with an approved sampler unit. However, it has long been known that some particles greater than 10 μ *can* be inhaled, and that some of these particles *can* reach the alveoli of the lungs (Lippman and Albert, 1969). According to the British National Coal Board, ''particles as large as 20 microns (*i.e.* micrometers) mean diameter may be deposited, although most ''lung dust'' lies in the range below 10 microns diameter'' (Goddard, *et al.*, 1973). Furthermore, it is known that, due to the irregular shapes of dust particles, the respirable dust collected by the MRE instrument (the dust sampler used by the British Medical Research Establishment in the epidemiological studies on which the U.S. coal dust standard was based) may include some dust particles as large as 20 micrometers (Goddard, *et al.*, 1973). Moreover, MSHA studies have shown that nearly all samples taken with approved sampler units, even when operated in the prescribed manner, contain some oversized particles (Tomb, August 31, 1981). Since section 202(e) of the Mine Act (30 U.S.C. 842(e)) defines concentration of respirable dust to be that measured by an approved sampler unit, and because the approved sampler unit will collect some oversized particles, the Secretaries do not consider a sample to be ''contaminated'' because it contains some oversized particles.

The Secretaries recognize that there are occasions when oversized particles can properly be considered a contaminant. For example, an excessive number of such particles could enter the filter capsule if the sampling head assembly is accidentally or deliberately turned upside down or ''dumped'' (possibly causing some of the contents of the cyclone grit pot to be deposited on the collection filter), if the pump malfunctions, or if the entire sampler unit is dropped. When MSHA has reason to believe that such contamination has occurred, the suspect sample is examined to verify its validity.

Contrary to the assertions of some previous commenters, checking for

oversized particles is not standard industrial hygiene practice. Nevertheless, MSHA checks any dust sample suspected of containing an excessive number of oversized particles. MSHA's laboratory procedures require any sample exhibiting an excessive weight gain (over 6 mg) or showing evidence of being ''dumped'' to be examined for the presence of an excessive number of oversized particles (MSHA Method P–4, August 1989). Samples identified by an inspector or mine operator as possibly contaminated are also examined. If this examination indicates that the sample contains an excessive number of oversized particles according to MSHA's established criteria, then that sample is considered to be invalid, is voided and not used. In fiscal year 1998, only one sample of the 37,042 inspector samples processed was found to contain an excessive number of oversize particles and thus was not used.

While rough handling of the sampler unit or an accidental mishap could conceivably cause a sample with a weight gain less than 6 mg to become contaminated, as claimed by some previous commenters, studies show that short-term accidental inclinations of the cyclone will not affect respirable mass measurements made with currently approved sampler units (Treaftis and Tomb, 1974). Sampler units currently used are built to withstand the rigors of the mine environment, and are therefore less susceptible to contamination than suggested by some previous commenters. In any event, the Secretaries believe that the validity checks currently in place, as discussed above, would detect such samples.

D. Measurement Uncertainty and Dust Concentration Variability

Overall variability in measurements collected on different shifts and sampling locations comes from two sources: (1) Environmental variability in the true dust concentration and (2) errors in measuring the dust concentration in a specific environment. The major portion of overall measurement variability reflects real variability in dust concentration on different shifts or at different sampling locations (Nicas, *et al.*, 1991).[18]

Variability in the dust concentration is under the control of the mine operator and does not depend on the degree to which the dust concentration can be accurately measured. Measurement uncertainty, on the other hand, stems from the differing measurement results that could arise, at a given sampling location on a given shift, because of potential sampling and analytical errors. Therefore, unlike variability in dust concentration, measurement uncertainty depends directly on the accuracy of the measurement system. Measurement errors generally contribute only a small portion of the overall variability observed in datasets consisting of dust concentration measurements.

Numerous previous commenters identified sources of measurement uncertainty and dust concentration variability that they believed should be considered when determining whether or not a measurement accurately represents such atmospheric conditions. Because the measurement objective is to accurately represent the average dust concentration at the sampling location over a single shift, it does not take into consideration dust concentration variability between shifts or locations. Sources of dust concentration variability would not be considered by the Secretaries in determining whether a measurement is accurate. Consequently, the Secretaries have concluded that the only sources of variability relevant to establishing accuracy of a single, full-shift measurement for purposes of section 202(f) of the Mine Act (30 U.S.C. 842(f)) would be those related to sampling and analytical error.

1. Sources of measurement uncertainty

Filter capsules are weighed prior to sampling. After a single, full-shift sample is collected, the filter capsule is weighed a second time, and the weight gain (g) is obtained by subtracting the pre-exposure weight from the post-exposure weight, which will then be adjusted for the weight gain or loss observed in the control filter capsule. A measurement (x) of the atmospheric condition sampled is then calculated by Equation 1:

$$x = \frac{1.38 \cdot g}{v} \qquad (1)$$

where:

x is the single, full-shift dust concentration measurement (mg/m^3);

1.38 is a constant MRE-equivalent conversion factor; g is the observed weight gain (mg) after adjustment for the control filter capsule; and

v is the estimated total volume of air pumped through the filter during a typical full shift.

The Secretaries recognize that random variability, inherent in any measurement process, may cause *x* to deviate either above or below the true dust concentration. The difference between x and the true dust concentration is the measurement error, which may be either positive or negative. Measurement uncertainty arises from a combination of potential errors in the process of collecting a sample and potential errors in the process of analyzing the sample. These potential errors introduce a degree of uncertainty when *x* is used to represent the true dust concentration.

The statistical measure used by the Secretaries to quantify uncertainty in a single, full-shift measurement is the total sampling and analytical coefficient of variation, or CV_{total}. The CV_{total} quantifies the magnitude of probable sampling and analytical errors and is expressed as either a fraction (*e.g.*, 0.05) or as a percent (*e.g.*, 5 percent) of the true concentration. For example, if a single, full-shift measurement *(x)* is collected in a mine atmosphere with true dust concentration equal to 1.5 mg/m^3, and the standard deviation of potential sampling and analytical errors associated with *x* is equal to 0.075 mg/m^3, the uncertainty associated with *x* would be expressed by the ratio of the standard deviation to the true dust concentration: $CV_{total} = 0.075/1.5 = 0.05$, or 5 percent.

Based on a review of the scientific literature, the Secretaries in their March 12, 1996 notice concerning the NIOSH Accuracy Criterion identified three sources of uncertainty in a single, full-shift measurement, which together make up CV_{total}:

(a) CV_{weight}—variability attributable to weighing errors or handling associated with exposed and control filter capsules. This covers any variability in the process of weighing the exposed or control filter capsules prior to sampling (pre-weighing), assembling the exposed and control filter cassettes, transporting

[18] Although MSHA and NIOSH accept the finding presented by Nicas, *et al.* (1991) that environmental variability generally exceeds analytical variability, the Agencies do not accept the authors' conclusions with regard to how this finding should affect enforcement policy.

the filter cassettes to and from the mine, and weighing the exposed and control filter capsules after sampling (post-weighing).

(b) CV_{pump}—variability in the total volume of air pumped through the filter capsule. This covers variability associated with calibration of the pump rotameter,[19] variability in adjustment of the flow rate at the beginning of the shift, and variation in the flow rate during sampling. It should be noted that variation in flow rate during sampling was identified as a separate component of variability in MSHA's February 18, 1994, notice. Here, it is included within CV_{pump}.

(c) $CV_{sampler}$—variability in the fraction of dust trapped on the filter. This is attributable to physical differences among cyclones. This component was introduced in the material submitted into the record in September 1994.

These three components of measurement uncertainty can be combined to form an indirect estimate of CV_{total} by means of the standard propagation of errors formula:

$$CV_{total} = \sqrt{CV_{weight}^2 + CV_{pump}^2 + CV_{sampler}^2} \qquad (2)$$

These three components are discussed in greater detail, along with responses to specific previous comments, in Appendix B.

2. Sources of Dust Concentration Variability

Previous commenters also raised issues related to sources of dust concentration variability. Some of these commenters maintain that the Secretaries should include in CV_{total} additional components representing the effects of shift-to-shift variability and variability related to location (spatial variability). These comments reflect a misunderstanding of the measurement objective as intended by the Mine Act (see Section X.A. of this notice).

Exposure variability due to job, location, shift, production level, effectiveness of engineering controls, and work practices will be different from mine to mine. This type of variability has nothing to do with measurement accuracy and depends on factors under the control of the mine operator. The sampler unit is not intended to account for these factors.

(a) Spatial Variability

Previous commenters stated that CV_{total} should account for spatial variability, or the differences in concentration related to location. The Secretaries agree that dust concentrations vary between locations in a coal mine, even within a relatively small area. However, real variations in concentration between locations, while sometimes substantial, do not contribute to measurement error. As stated earlier, the measurement objective would be to accurately measure average atmospheric conditions, or concentration of respirable dust, at a sampling location over a single shift.

(b) Shift-to-shift Variability

Previous commenters stated that CV_{total} should take into account the differences or variations in dust concentration that occur shift to shift. Although the Secretaries would agree that dust concentrations vary from shift to shift, the measurement objective is to measure average atmospheric conditions on the specific shift sampled. This result would be consistent with the Mine Act, which requires that concentrations of respirable mine dust be maintained at or below the applicable standard during each shift.

3. Other Factors Considered

(a) Proportion of Oversized Particles

Previous commenters expressed concern that respirable dust cyclones are handled in a rough manner in normal use and occasionally turned upside down. According to one commenter, this type of handling would cause more large particles to be deposited on the filter in the mine environment than when used in the laboratory. This commenter knew of no data that could be used to evaluate the error associated with such occurrences and recommended that a study be commissioned to measure the proportion of non-respirable particles on the filters after they are weighed to MSHA standards.

After considering this recommendation, the Secretaries would conclude that the available evidence shows that short-term inclinations of the cyclone, as might frequently occur during sampling, will not affect respirable dust measurements made with approved sampler units (Treaftis and Tomb, 1974). The weight of the sampler head assembly makes it extremely unlikely that a sampler unit could be turned upside down in normal use. Furthermore, with a field study of the type recommended, variability in the field measurements due to normal handling would be confounded with variability due to real differences in atmospheric conditions. Therefore, the Secretaries believe that such a study would not be useful in establishing variability in measurements due to differences in handling of the sampler unit.

(b) Anomalous Events

Previous commenters asserted that unpredictable, infrequent events, such as a ''face blowout'' on a longwall (a violent expulsion of coal together with large quantities of coal dust and/or methane gas) or high winds at a surface mine, can cause rapid loading of a filter capsule and thereby distort a measurement to show an excessive dust concentration based on a single, full-shift sample when, they argue, the dust standard had not been exceeded. In fact, if such an occurrence were to cause a measurement above the applicable standard, the dust standard would be violated. No evidence was previously presented to demonstrate that short-term high exposures can overload a dust sampling filter or cause the sampling device to malfunction. Nor was evidence presented to demonstrate that miners are not also exposed to the same high dust concentrations as the sampler unit when such events occur. The Secretaries would conclude that such events are results of the dynamic and ever-changing mine environment—an environment to which the miner is exposed. The sampler unit is designed to measure the atmospheric condition at a specific sampling location over a full shift. If such events occur, the sampler unit will accurately record the atmospheric condition to which it is exposed.

[19] The rotameter consists of a weight or ''float'' which is free to move up and down within a vertical tapered tube which is larger at the top than the bottom. Air being drawn through the filter cassette passes through the rotameter, suspending the ''float'' within the tube. The pump is ''calibrated'' by drawing air through a calibration device (usually what is known as a bubble meter) at the desired flow rate and marking the position of the float on the tube. The processes of marking the position on the tube (laboratory calibration) and adjusting the pump speed in the field so that the float is positioned at the mark are both subject to error.

(c) MRE Conversion Factor Used in the Dust Concentration Calculation

Several previous commenters questioned the 1.38 MRE-conversion factor used in Equation 1. This factor is used to convert a measurement obtained with the type of dust sampler unit currently approved for use in coal mines to an equivalent concentration as measured with an MRE gravimetric dust sampler. The term ''MRE instrument'' is defined in 30 CFR § 70.2 (i). The conversion factor is necessary because the coal mine dust standard was derived from British data collected with an MRE instrument, which collects a larger fraction of coal mine dust than does the approved dust sampling unit (Tomb, *et al.*, 1973). The 1.38 constant has been established by the Secretaries as applying to the currently approved dust sampler unit described in 30 CFR part 74.

Some previous commenters contended that variability involved in the data analysis used in establishing the conversion factor should be taken into account in determining CV^{total}. This suggestion demonstrates a misunderstanding of the difference between measurement imprecision and measurement bias. The 1.38 factor applies to every sampler unit currently approved under part 74. Since the same conversion factor is applied to every measurement, any error in the value used would cause a measurement bias but would have no effect on measurement imprecision. Since Congress defined respirable dust in section 202(e) of the Mine Act (30 U.S.C. 842(e)) as whatever is collected by a currently approved sampler unit, a measurement incorporating the 1.38 factor is unbiased by definition. Further discussion is provided in Appendix B on why use of the 1.38 factor does not introduce a bias. Appendix B also addresses comments relating to other aspects of the 1.38 conversion factor; comments regarding the fact that MSHA's sampler unit does not conform to other definitions of respirable dust; and questions concerning the effect of static charge on sampler unit performance.

(d) Reduced Dust Standards

One commenter pointed out that in estimating CVtotal, MSHA and NIOSH did not take into account any potential errors associated with silica analysis. The commenter argued that since silica analysis is used to establish reduced dust standards, MSHA and NIOSH had failed to demonstrate ''* * * accuracy for all samples 'across the range of possible reduced dust standards.'' '

This commenter confuses the accuracy of a respirable dust concentration measurement with the accuracy of the procedure used to establish a reduced dust standard. MSHA has a separate program in which silica analysis is used to set the applicable respirable coal mine dust standard, in accordance with section 205 of the Mine Act (30 U.S.C. 845), when the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz. As shown by Equation 1, no silica analysis is used in a single, full-shift measurement of the respirable dust concentration. Therefore, the Secretaries would not agree with the comment that CV_{total} should include a component representing potential errors in silica analysis.

(e) Dusty Clothing

Several previous commenters pointed out that local factors such as dusty clothing could cause concentrations in the immediate vicinity of the sampler unit to be unrepresentative of a larger area. Dust from a miner's clothing nevertheless represents a potential hazard to the miner. No evidence was previously presented to demonstrate that miners are not also exposed to dust originating from dusty clothing.

E. Accuracy of a Single, Full-shift Measurement

1. Quantification of Measurement Uncertainty

Several previous commenters argued that MSHA underestimated CV_{total} in its February 18, 1994 proposed notice of Joint Finding and suggested alternative estimates ranging from 16 to 50 percent. These commenters cited several published studies and submitted five sets of data in support of these higher estimates. Statistical analyses of the data were also submitted.

MSHA and NIOSH reviewed all of the studies referenced by the previous commenters. The review showed that all of the estimates of measurement variability were from studies carried out prior to improvements mandated by the 1980 MSHA revisions to dust sampling regulations, discussed earlier in ''Validity of the Sampling Process'' (see Section X.C.). For example, the General Accounting Office (GAO) [20] and the National Bureau of Standards (NBS, now the National Institute of Standards and Technology) studies were conducted in 1975. The National Academy of Sciences report, which analyzed the same data as the NBS and GAO reports, was issued in 1980. The review further showed that the measurement variability quantified in these studies included effects of spatial variability—a component of variability the Secretaries deliberately exclude when determining the accuracy of a sampling and analytical method as discussed in section X.D.2.(a). Additionally, since past studies frequently relied on combining estimates of variability components obtained from different bodies of data, some of them also suffered from methodological problems related to combining individual sources of uncertainty. For example, in 1984, a NIOSH study identified several conceptual errors in earlier studies that had led to double-or even triple-counting of some variability components (Bowman, *et al.*, 1984). Although all the data and analyses submitted by previous commenters included effects of spatial variability, one of these data sets, consisting of paired sample results, contained sufficient information to indicate that weighing imprecision was less than what MSHA had assumed in its February 18, 1994 notice. However, without an independent estimate of spatial variability applicable to these samples, it is not mathematically possible to utilize this data set to estimate variability attributable to the sampler unit or the volume of air sampled. A second data set consisted only of differences in dust concentration between paired samples, making it impossible to use it even for evaluating weighing imprecision. The remaining three data sets included effects of shift-to-shift variability, which, like spatial variability, would not be relevant to the measurement objective. Therefore, none of these data could be used to estimate overall measurement imprecision. Further details are provided in Appendix C.

One of the previous commenters particularly questioned the value MSHA used in its February 18, 1994 proposed notice of Joint Finding to represent variability in initially setting the pump flow rate. In response to this commenter's suggestion, MSHA conducted a study to verify the magnitude of this variability component. This study simulated flow rate adjustment under realistic operating conditions by including a number of persons checking and adjusting initial flow rate under various working situations (Tomb, September 1, 1994). Results showed the coefficient of variation associated with the initial flow

[20] Many of the recommendations in the GAO report were later adopted and implemented by MSHA.

rate adjustment to be 3 ± 0.5 percent, which is less than the 5-percent value used by MSHA in the February 1994 notice. In addition, based on a review of published results, the Secretaries would conclude that the component of uncertainty associated with the combined effects of variability in flow rate during sampling and potential errors in calibration is actually less than 3 percent. As explained in Appendix B, these two sources of uncertainty can be combined to estimate CV_{pump}. After reviewing the available data and the comments submitted, the Secretaries would conclude that the best estimate of CV_{pump} is 4.2 percent. Additional details regarding CV_{pump}, along with the Secretaries' responses to comments, are presented in Appendix B.

Intersampler variability, represented by $CV_{sampler}$, accounts for uncertainty due to physical differences from sampler to sampler. Most of the previous commenters ignored this source of uncertainty. As explained in Appendix B, the Secretaries would adopt a 5-percent estimate of $CV_{sampler}$.

To address previous commenters' concerns that the Agencies had underestimated CV_{total}, MSHA conducted a field study to directly estimate the overall measurement precision attainable when dust samples are collected with currently approved sampler units and analyzed using state-of-the-art analytical techniques. The study involved simultaneous field measurements of the same coal mine dust cloud using sampling pumps incorporating constant flow technology. Using a specially designed portable dust chamber, 22 tests were conducted at various locations in an underground coal mine. Each test consisted of collecting 16 dust samples simultaneously and at the same location. No adjustments in the flow rate were made beyond what would routinely have been done by an MSHA inspector.

Prior to the field study, two modifications to MSHA's sampling and analytical method had been considered by MSHA and NIOSH: (1) Measuring both the pre-and post-exposure weights to the nearest microgram (μg) on a balance calibrated using the established procedure within MSHA's Respirable Dust Processing Laboratory; and (2) discontinuing the practice of truncating the recorded weights used in calculating the dust concentration. These modifications were incorporated into the design of the field study.

One previous commenter characterized the field study as being ''woefully incomplete'' because it was conducted ''in a tightly controlled environment * * * not subject to normal environmental variation.'' While it is true that the samples within each test were not subject to normal environmental variability, this was because the experiment was deliberately designed to avoid confusing spatial variability in dust concentration with measurement error. However, pumps were handled and flow rates were checked in the same manner as during routine sampling. Furthermore, the sampler units were disassembled and reassembled in the normal manner to remove and replace dust cassettes.

Previous commenters also questioned the value that MSHA used in the February 1994 proposed notice of Joint Finding to represent uncertainty due to potential weighing errors. In September 1994, MSHA submitted into the record an analysis based on replicated weighings for 300 unexposed filter capsules, each of which was weighed once by the cassette manufacturer and twice in MSHA's laboratory (Kogut, May 12, 1994). An estimate of weighing imprecision derived from this analysis was used by NIOSH in its September 20, 1995 assessment of MSHA's sampling and analytical procedure (discussed in more detail later in section X.E.)

In the March 12, 1996 notice concerning the NIOSH Accuracy Criterion, MSHA described the results of an investigation into repeated weighings of the same capsules made over a 218-day period using MSHA's automatic weighing system. It was noted that after approximately 30 days, filter capsules left exposed and unprotected gained a small amount of weight—an average of 0.8 μg (micrograms) per day. Neither NIOSH nor MSHA considered this a problem, since all dust samples are analyzed within 24 hours of receipt and are not left exposed and unprotected. However, more recent data collected to quantify weighing variability between the Mine Safety Appliances Co. and MSHA laboratories showed that filter capsules tend to gain a small amount of weight even when stored in plastic cassettes (Parobeck, *et al.*, 1997). To check this result, 75 unexposed filter cassettes that had been distributed to MSHA's district offices were recalled and the filter capsules were reweighed. On average, the weight gain was about 40 μg over a time period of roughly 150 days. Statistical analyses of these data performed by MSHA and NIOSH confirmed the previous result (Parobeck, *et al.*, 1997; Wagner, May 28, 1997). While the cause has not been established, it is hypothesized that at least some of the observed weight gain may be the result of outgassing from the plastic cassette onto the filter capsule. If uncorrected, any systematic change in weight not due to coal mine dust would introduce a bias in dust concentration measurements.

One commenter had previously stated that the Secretaries were addressing only precision, thereby implying that potential biases were being ignored. To eliminate the potential for any bias due to a spurious gain or loss of filter capsule weight, MSHA has used control filter capsules in its enforcement program since April 30, 1998. Any change in weight observed for the control filter capsule will be subtracted from the measured change in weight of the exposed filter capsule. Each control filter capsule will be pre-weighed with the other filter capsules, will be stored and transported with the other capsules, and will be on the inspector's person during the day of sampling. This 1998 modification to MSHA's inspector sampling and analytical procedure will ensure an unbiased estimate of the true weight gain (Wagner, May 28, 1997).

(a) Experience Gained From Use of Control Filters

As explained above under the headings of ''Sample Processing'' and ''Quantification of Measurement Uncertainty'', evidence of relatively small weight gains in unexposed filter capsules led MSHA, in 1998, to begin using unexposed control filters to adjust the weight gains measured for exposed filters. Under the new system, respirable coal mine dust samples taken by MSHA inspectors are matched with unexposed control filter capsules. For an inspector sample to be valid, the matching, unexposed control filter capsule must have been weighed on the same two days as the exposed capsule—initially before exposure and then, for a second time, afterwards.

From April 30, 1998 through December 31, 1998, a total of 5,578 such control filter capsules were weighed for the second time in MSHA's laboratory after having been sent out to the field. Although MSHA's new processing system was not fully implemented before April 30, 1998, many of these control filter capsules which were constructed with Tyvek®, along with the corresponding exposed capsules, were initially weighed prior to 1998. The time intervals between first and second weighings ranged from 32 to 608 days. Excluding six filter capsules that were broken, misidentified, improperly labeled, or contaminated, weight gains measured for the remaining 5,572 unexposed filter capsules ranged from a maximum of 420 μg down to a negative 317 μg (*i.e.*, a weight loss of 317 μg). Approximately 50% of the unexposed

filter capsules showed a weight gain of 15 µg or more. The mean weight gain measurement (counting losses as negative gains) was 14.0 µg, and the standard deviation was 24.6 µg. The initial and second weight measurements for each of these control filter capsules which were constructed with Tyvek® support pads, along with the measurement dates, are being placed into the public record for analysis and comment by interested parties.

As explained earlier, if an unexposed control filter either shows a weight gain greater than 100 µg or a weight loss greater than 30 µg, then, instead of using it to make any adjustment, MSHA simply voids the corresponding coal mine respirable dust sample. This occurred in 126 cases, leaving 5,446 cases in which the control filter was actually used to adjust a dust sample. For these 5,446 control filters, the mean weight gain measurement was 14.8 µg, and the standard deviation was 19.2 µg. Consequently, weight gains observed in exposed filters were reduced by about 15 µg, on average, through the end of 1998. This corresponds to an average reduction in measured dust concentration of about 0.02 mg/m^3 for a 480-minute dust sample. Individual dust concentration measurements, however, were reduced by up to 0.14 mg/m^3 (corresponding to a 100-µg weight gain measured for the control filter) or increased by up to 0.04 mg/m^3 (corresponding to a 30-µg weight loss for the control filter).

Variability in unexposed filter weight gain measurements, as expressed by the standard deviation of 24.6 µg, consists of three components: (1) random weighing errors; (2) spurious but real changes in weight, such as might be due to contamination or outgassing from the plastic filter cassette onto the filter capsule; and (3) effects of any changes in laboratory conditions between the first and second weighings. Each of these three effects also contributes to uncertainty in the amount of coal mine dust accumulated on an exposed filter.

MSHA's purpose in using unexposed control filters to adjust weight gains measured for exposed filters is to eliminate the second and third of these components as sources of measurement uncertainty for the exposed filters. Unfortunately, the control filter adjustment cannot eliminate the first component, comprised of random weighing errors. To the contrary, making the adjustment based on a single control filter doubles the number of weighings required to establish weight gain for an exposed filter. This increases (by a factor of $\sqrt{2}$) uncertainty due to the random error potentially associated with each weighing. Therefore, there is a tradeoff in applying the control filter adjustment: the adjustment improves accuracy only if it succeeds in reducing uncertainty due to changes in laboratory conditions and spurious changes in filter weight by an amount greater than the increase in uncertainty resulting from the additional weighings required.

Estimates representing the first component (*i.e.,* the standard deviation of random errors in measuring the change in weight of a filter capsule) are presented in Appendix C and range from 8.2 µg to 11.3 µg for Tyvek®-supported filters under MSHA's current procedures. Even if the true value were so high as 11.3 µg, then applying the control filter adjustment increased this source of uncertainty to no more than $11.3 \cdot \sqrt{2} = 16.0$ µg. This is still substantially less than the 24.6 µg standard deviation observed in CNTRL_98, which includes, in addition to random weighing errors, the effects of variability in laboratory conditions and spurious but real changes in filter weight (MSHA, Data file: CNTRL_98, 1999). Therefore, so long as the control filter adjustment successfully eliminated these latter sources of variability, its net effect was to reduce uncertainty in the amount of respirable coal mine dust deposited on an exposed filter.

Control filters, however, fully eliminate the effects of day-to-day variation in laboratory conditions and spurious changes in filter weight only if these effects are consistent for all filters weighed on the same days and sent out to the same field location for the same length of time between weighings. In the absence of evidence to the contrary, MSHA and NIOSH consider this to be a reasonable assumption in the case of laboratory effects: any systematic differences in laboratory conditions between the dates of initial and final weighing should have essentially the same effect on weights recorded for unexposed filter capsules as for exposed filter capsules.

The remaining component of uncertainty, resulting from spurious but real weight changes such as might be caused by outgassing or contamination, is eliminated by the control filter adjustment only to the extent that such effects are consistent for all filters pre-weighed on the same day, sent out to the same field location, and then post-weighed on the same day. MSHA checked this assumption for currently approved filter capsules—*i.e.,* those employing Tyvek® support pads—using a body of control filter data being placed into the public record (MSHA, Data file: NHSCP_99, 1999).

The NHSCP_99 dataset consists of 108 ''batches'' in which several control filter capsules were first weighed on the same day, taken to the same mine site (but left unexposed), and then all weighed again on the same day in 1999. For example, a batch of six capsules may have been initially weighed on December 19, 1997, left unexposed during a mine visit on February 23, 1999, and then weighed for the second time on March 2, 1999. The NHSCP_99 data set contains information on a total of 564 filter capsules, divided into 108 such batches so that, on average, there were about five unexposed filter capsules per batch. The time interval between initial and final weighings averaged 335 days and ranged from 136 to 694 days. Closely matching results from CNTRL_98, the overall mean weight gain recorded for these unexposed filter capsules was about 14 µg, and the overall standard deviation was about 25 µg.

If changes in weight are indeed consistent for control filters subjected to similar handling and aging effects, then variability in weight gains within batches should not significantly exceed variability attributable to random weighing errors alone. MSHA's statistical analysis of NHSCP_99, however, indicated that variability in weight gains within batches was significantly greater than what can be attributed to random weighing errors under current processing procedures (Kogut, *et al.,* 1999). MSHA's estimate of the standard deviation of weight gains measured for unexposed filters within batches was 19.8 µg. This suggests that, for filter capsules employing Tyvek® support pads, the effects on weight gain of handling, aging, and/or environment may not be uniform—even when the filter capsules are treated similarly.

MSHA then performed a field experiment to determine if modifying the filter capsule would reduce variability due to spurious changes in weight (Kogut, *et al.,* 1999). In this experiment, 300 unexposed filter capsules employing the standard Tyvek® support pad were compared with a matched set of 300 unexposed modified capsules employing a stainless steel support pad (MSHA, Data file: MFSC.xls, 1999). Ninety-nine different MSHA inspectors used three of each type of filter capsule as controls during coal mine dust inspections at 100 different MMUs in 100 different mines. All six unexposed capsules used in an inspection were carried and handled by the inspector in the same way as during routine dust inspections. Also in accordance with MSHA's normal practice, all filter capsules in the batch used for an inspection were pre- and

post-weighed on the same pair of days at MSHA's Respirable Dust Weighing Laboratory.

MSHA's statistical analysis of the MFCS data indicated that substituting a stainless steel support pad for the Tyvek® support pad currently in use, in both exposed and unexposed filter capsules, could significantly improve measurement accuracy. This modification reduced the standard deviation of weight gains measured for unexposed filters within batches to 11.6 μg.

MSHA and NIOSH would welcome further statistical analysis of the datasets being placed into the public record with this notice. The Agencies would also welcome suggestions on how MSHA might further modify its analytical procedures to reduce uncertainty in the amount of dust deposited on an individual filter.

2. Verification of Method Accuracy

NIOSH's first independent analysis of MSHA's sampling and analytical method involved MSHA's 1995 field study data.[21] These data incorporated certain improvements that NIOSH had proposed for MSHA's sampling and analytical method. As described elsewhere in this notice, these improvements were later adopted for all MSHA inspector samples. From these data, NIOSH determined, with 95-percent confidence, that the true CV_{total} for MSHA's proposed sampling and analytical method was less than the target maximum value of 12.8 percent for dust concentrations of 0.2 mg/m^3 or greater (Wagner, 1995). This demonstrated that MSHA's sampling and analytical method for collecting and processing single full-shift samples would meet the NIOSH Accuracy Criterion whenever the true dust concentration was at least 0.2 mg/m^3.

In the same report NIOSH also applied an indirect approach for assessing the accuracy of MSHA's sampling and analytical method. The indirect approach involved combining separate estimates of weighing imprecision, pump-related variability, and variability associated with physical differences between individual sampler units. This indirect approach also indicated that MSHA's sampling and analytical method would meet the NIOSH Accuracy Criterion at concentrations greater than or equal to 0.2 mg/m^3, thereby corroborating the analysis of MSHA's field data.

As discussed above, MSHA later obtained data suggesting that filter capsules containing Tyvek® backup pads sometimes exhibit spurious changes in weight. Although the changes observed were relatively small, compared to weight gains required for MSHA's noncompliance determinations, this led MSHA to begin using unexposed control filters in its enforcement program. As explained in Appendices A and B, the use of a control filter adjustment eliminates systematic errors due to such effects, but also affects the precision of a single, full-shift measurement. Consequently, NIOSH reassessed the accuracy of MSHA's sampling and analytical method, taking into account the effects of using a control filter capsule (Wagner, May 28, 1997). After accounting for the effects of control filter capsules on both bias and precision, NIOSH concluded, based on both its direct and indirect approaches, that a single, full-shift measurement will meet the NIOSH Accuracy Criterion at true dust concentrations greater than or equal to 0.3 mg/m^3.

As part of its ongoing commitment to improving the sampling and analytical method, MSHA recently compiled data showing that weight stability of the filter capsule would be improved by substituting stainless steel support grids for the Tyvek® support pads currently in use (Kogut *et al.,* 1999). Therefore, NIOSH again reassessed the accuracy of MSHA's method, this time taking into account the proposal to switch to stainless steel support grids (Grayson, 1999a; 1999b). After accounting for the effects of switching to stainless steel support grids, and of using unexposed control filters to adjust for any potential systematic errors that might remain, NIOSH once again concluded that a single, full-shift measurement will meet the NIOSH Accuracy Criterion at true dust concentrations greater than or equal to 0.3 mg/m^3.

One previous commenter stated that the Secretaries ''have not addressed the 'accuracy' of a single sample collected from an environment where the concentration is unknown.'' The purpose of any measurement process is to produce an estimate of an unknown quantity. The Secretaries have concluded that MSHA's sampling and analytical method for inspectors meets the NIOSH Accuracy Criterion for true concentrations at or above 0.3 mg/m^3, but it is also possible to calculate the range of measurements for which the Accuracy Criterion is fulfilled. Since CV_{total} increases at the lower concentrations, all that is necessary is to determine the lowest measurement at which the NIOSH Accuracy Criterion is met. This is done as follows. If the true concentration exactly equaled the lowest concentration at which MSHA's sampling and analytical method meets the Accuracy Criterion (i.e., 0.3 mg/m^3), then no more than 5% of single, full-shift measurements would be expected to exceed 0.36 mg/m^3 (Wagner, May 28, 1997). Conversely, if a measurement equals or exceeds 0.36 mg/m^3, it can be inferred, with at least 95% confidence, that the true dust concentration equals or exceeds 0.3 mg/m^3 (Wagner, May 28, 1997). Consequently, the Secretaries conclude that MSHA's improved sampling and analytical method satisfies the NIOSH Accuracy Criterion whenever a single, full-shift measurement is at or above 0.36 mg/m^3.

The Secretaries recognize that future technological improvements in MSHA's sampling and analytical method may reduce CV_{total} below its current value. Also, as additional data are accumulated, updated estimates of CV_{total} may become available. However, so long as the method remains unbiased and CV_{total} remains below 12.8 percent, at a 95-percent confidence level, the sampling and analytical method will continue to meet the NIOSH Accuracy Criterion, and the present finding will continue to be valid.

XI. Proposed New Finding and Proposed Rescission of the 1972 Joint Finding

The Secretaries have concluded that sufficient data exist for determining the uncertainty associated with a single, full-shift measurement; rigorous requirements are in place, as specified by 30 CFR parts 70, 71, and 90, to ensure the validity of a respirable coal mine dust sample; and valid statistical techniques were used to determine that MSHA's improved dust sampling and analytical method meets the NIOSH Accuracy Criterion. For these reasons the Secretaries would find that a single, full-shift measurement at or above 0.36 mg/m^3 will accurately represent atmospheric conditions to which a miner is exposed during such shift. Therefore, pursuant to section 202(f) (30 U.S.C. 842(f)) and in accordance with section 101 (30 U.S.C. 811) of the Mine Act, the 1972 joint notice of finding would be rescinded.

XII. Feasibility Issues

Section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)) requires the Secretary of Labor to set standards which most adequately assure, on the basis of the best available evidence, that

[21] With its field study, MSHA exceeded the usual requirements for determining the accuracy of a sampling and analytical method, as described by NIOSH (Kennedy, *et al.,* 1995) and the European Community (European Standard No. EN 482, 1994). Both of these require only a laboratory determination of method accuracy.

no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to such hazards dealt with by such standard over his or her working lifetime. Standards promulgated under this section must be based upon research, demonstrations, experiments, and such other information as may be appropriate. MSHA, in setting health standards, is required to achieve the highest degree of health and safety protection for the miner, and must consider the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

In relation to promulgating health standards, the legislative history of the Mine Act states that:

> * * * This section further provides that ''other considerations'' in the setting of health standards are ''the latest available scientific data in this field, the feasibility of the standards, and experience gained under this and other health and safety laws.'' While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated.
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> * * * * *
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> Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of section 102(a)(5)(A), the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure.

S. Rep. No. 95–181, at 21–22 (1977), reprinted in 1977 U.S.C.C.A.N. 3421–22.

In *American Textile Manufacturers' Institute* v. *Donovan,* 452 U.S. 490, 508–509 (1981), the Supreme Court defined the word ''feasible'' as ''capable of being done, executed, or effected.'' The Court further stated, however, that a standard would not be considered economically feasible if an entire industry's competitive structure were threatened. In promulgating standards, hard and precise predictions from agencies regarding feasibility are not required.

A. Technological Feasibility

MSHA, in consultation with NIOSH, believes that compliance determination based on an inspector, single, full-shift exposure measurement would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA,* (AISI–II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA,* (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dep't., AFL–CIO* v. *Hodgson,* 499 F.2d 467, 478 (D.C. Cir. 1974).

This NPRM would not be a technology-forcing standard. The single, full-shift sample rule when promulgated predominantly affects MSHA's procedures since MSHA alone conducts inspector sampling. After the promulgation of single, full-shift sample rule, coal mine operators would continue to comply with the existing respirable dust concentration limit of 2.0 mg/m^3. Such compliance with the applicable standard has proven feasible over the years. Furthermore, single, full-shift samples were found to be technologically feasible during the prior effective Interim Single-Sample Enforcement Policy (ISSEP), March 2, 1998 through September 4, 1998 (see section V.D. of the preamble detailing the ISSEP).

B. Economic Feasibility

MSHA, in consultation with NIOSH, believes that the single full shift sample (SFSS) rule would be economically feasible for the coal mining industry. The coal mining industry would incur costs of approximately $1.8 million yearly to comply with the proposed SFSS rule. Coal mine operators would also incur approximately an additional $0.2 million yearly in penalty costs associated with the additional citations arising from the proposed SFSS rule. That the total $2.0 million borne yearly by the coal mining industry as a result of the proposed SFSS rule is well less than 1 percent (about 0.01 percent) of the industry's yearly revenues of $19.8 billion provides convincing evidence that the proposed rule is economically feasible.

Economic feasibility does not guarantee the continued existence of individual employers—''A standard is not infeasible simply because it is financially burdensome, * * * or even because it threatens the survival of some companies within an industry:'' *United Steelworkers of America* v. *Marshall,* 647 F.22d 1189, 1265 (D.C. Cir. 1981).

This rule would not threaten the industry's competitive structure. After the promulgation of single, full-shift sample rule the Agencies expect that coal mine operators would continue to comply with the existing respirable dust concentration limit of 2.0 mg/m^3. Single, full-shift samples were found to be economically feasible during two prior effective periods—July 15, 1991 through December 31, 1993, and March 2, 1998 through September 4, 1998—when noncompliance determinations were based on the results of MSHA inspector single samples. No disruption in mining activity was attributed to MSHA's single-sample enforcement policy during either of these periods.

XIII. Regulatory Impact Analysis

MSHA's improved program to eliminate overexposures on each and every shift includes (1) the simultaneous implementation of the use of inspector single, full-shift respirable coal mine dust samples to identify overexposures more effectively in both underground and surface coal mines (single, full-shift sample), and (2) in underground coal mines, verified ventilation plans to maintain miners' respirable dust exposure at or below the applicable standard on each and every shift (plan verification). The plan verification NPRM is published elsewhere in today's **Federal Register**. This part of the preamble reviews several impact analyses which the Agencies are required to provide in connection with the single, full-shift sample proposed rulemaking. Since single, full-shift sample and plan verification are complementary NPRMs intended to be promulgated at the same time, the detailed presentation of assumptions and estimates for each are available in the same Preliminary Regulatory Economic Analysis (PREA)(MSHA, December 1999).

Assumptions for single, full-shift sample requirements are based upon information provided by MSHA technical personnel. We encourage the mining community to provide detailed comments in this regard to ensure that single, full-shift sample cost assumptions and estimates are as accurate as possible.

A. Costs and Benefits: Executive Order 12866

In accordance with Executive Order 12866, the Agencies have prepared a detailed PREA of the estimated costs and benefits associated with the proposed rule for the underground and surface coal mining sectors. We have fulfilled this requirement for the proposed rule and determined that this rulemaking is not a significant regulatory action. The key findings of the PREA are summarized below.

1. Compliance Costs

The Agencies estimate that the cost of this NPRM would be approximately $1.8 million annually, of which all but

about $5,200 would be borne by underground coal mine operators (the residual $5,200 to be borne by surface coal mine operators). Table XIII–1 summarizes the estimated compliance costs by provision, for underground and surface coal mines, for the following three mine size categories: (1) those employing fewer than 20 workers; (2) those employing between 20 and 500 workers; and (3) those employing more than 500 workers.

The compliance costs arising from the single, full-shift sample NPRM would occur as a result of a slight increase in the number of MSHA inspector citations issued to underground and surface coal mine operators due to the determination of noncompliance with the respirable coal mine dust standard being based on inspector single, full-shift samples rather than the average of multiple inspector exposure measurements. The additional citations due to single, full-shift sample would require mine operators to undertake the following actions and to incur associated compliance costs: take corrective action(s) in order to get back into compliance with the applicable respirable coal mine dust standard; perform abatement sampling; complete dust data cards; send abatement samples to MSHA; post abatement sample results; write respirable dust plans; and post or give a copy of dust plans.

In addition to these estimated compliance costs, mine operators would incur yearly penalty cost increases of about $0.2 million. Penalty costs conventionally are not considered to be a cost of a rule (and, in fact, are clearly not a compliance cost) but merely a transfer payment from a party violating a rule to the government. Therefore, the penalty costs are not included as part of the compliance costs of the proposed SFSS rule noted above. These penalty costs are relevant, however, in determining the economic feasibility of the proposed SFSS rule.

The derivation of the above cost figures are presented in Chapter IV of the PREA that accompanies this rule.

TABLE XIII–1.—SUMMARY OF COMPLIANCE COSTS FOR SINGLE, FULL-SHIFT SAMPLE PROPOSED RULE

Estimated costs by category	< 20 emp.	> 20 emp. < 500	> 500 emp.	Total
UNDERGROUND COAL MINES				
Corrective Actions	$328,488	$1,266,767	$19,527	$1,614,782
Abatement Sampling	38,658	128,264	1,129	168,051
Dust Data Cards	717	2,588	37	3,343
Send Sample to MSHA	1,200	4,331	62	5,593
Post Sample Results	241	865	12	1,117
Write Dust Plan	151	302	0	453
Post or Give Dust Plan	3	5	0	8
Total Underground	369,457	1,403,122	20,769	1,793,348
SURFACE COAL MINES				
Corrective Actions	366	2,194	0	2,560
Abatement Sampling	594	1,394	0	1,989
Dust Data Cards	3	13	0	17
Send Sample to MSHA	6	22	0	28
Post Sample Results	4	8	0	12
Write Dust Plan	151	453	0	604
Post or Give Dust Plan	3	8	0	10
Total Underground	1,127	4,094	0	5,220
UNDERGROUND AND SURFACE COAL MINES				
Corrective Actions	328,854	1,268,961	19,527	1,617,342
Abatement Sampling	39,252	129,658	1,129	170,040
Dust Data Cards	720	2,602	37	1,282
Send Sample to MSHA	1,205	4,353	62	5,621
Post Sample Results	245	873	12	1,129
Write Dust Plan	302	756	0	1,058
Post or Give Dust Plan	5	13	0	18
Grand Total	370,584	1,407,215	20,769	1,798,568

*Totals may vary due to rounding.

2. Benefits

Occupational exposure to excessive levels of respirable coal mine dust imposes significant health risks. These include the following adverse health outcomes: simple coal workers' pneumoconiosis (simple CWP), progressive massive fibrosis (PMF), silicosis, and chronic obstructive pulmonary disease (COPD) (e.g., asthma, chronic bronchitis, emphysema) (see the Health Effects section for details). Cumulative exposure to respirable coal mine dust is the main determinant in the development of both simple CWP and PMF although other factors such as the percentage of quartz in the respirable dust and the type of coal also affect the risk of miners developing simple CWP and PMF (Jacobsen, *et al.,* 1977; Hurley, *et al.,* 1987; Kuempel, *et al.,* 1995; Attfield and Morring, 1992; Attfield and Seixas, 1995). The true magnitude of occupationally induced simple CWP and PMF among today's coal miners is unknown, although prevalence estimates are available from various surveillance systems. For example, from 1970 to 1995, the prevalence of simple CWP and PMF

among miners, based on the operator sponsored x-ray program, dropped from 11 percent to 3 percent (MSHA, Internal Chart, 1998). Also, later rounds of the National Study for Coal Worker's Pneumoconiosis consistently demonstrated, through prevalence rates in the range of 2.9–3.9 percent, that simple CWP and PMF have not been eliminated.

Through the joint promulgation of single, full-shift sample and plan verification rules, miners would be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust to no more than the applicable standard on each and every shift.[22] Reducing respirable coal mine dust concentrations over a 45-year occupational lifetime to no more than the applicable standard on just that percentage of shifts currently showing an excess would lower the cumulative exposure, thereby significantly reducing the risk of both simple CWP and PMF among miners. We have estimated the health benefits of the two rules arising from the elimination of overexposures on all shifts at only those MMUs exhibiting a pattern of recurrent overexposures on individual shifts.

Based on 1999 operator data, there were 704 MMUs (out of 1,251) at which regular (not abatement) designated occupational (D.O.) samples exceeded the applicable standard on at least two of the sampling shifts reported in 1999 (MSHA, Data file: Operator.ZIP).[23] MSHA considers these 704 MMUs, representing more than one-half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures. Based on valid D.O. operator samples collected on a total of 18,569 shifts at these 704 MMUs, the applicable standard was exceeded on about on 3,977 of these shifts or 21.4 percent.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures),[24] bringing dust concentrations down to no more than the applicable standard on each and every production shift would reduce D.O. exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 21 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the D.O. level, by 0.22 mg-yr/m^3 over the course of a working year (i.e., 21 percent of shifts in one year times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected D.O. miner would, on average, amount to a reduction in accumulated exposure of approximately 10 mg-yr/m^3 (i.e., 45 years times 0.22 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples currently submitted to MSHA tend to under-represent either the frequency or magnitude (or both) of individual full-shift excursions above the applicable standard, then eliminating such excursions would provide a lifetime reduction of even more than 10 mg-yr/m^3 for each exposed miner.

When the dust concentration measured for the D.O. exceeds the applicable standard, measurements for at least some of the other miners working in the same MMU may also exceed the standard on the same shift, though usually by a smaller amount. Furthermore, although the D.O. represents the occupation most likely to receive the highest exposure, other miners working in the same MMU may be exposed to even higher concentrations than the D.O. on some shifts. Therefore, in addition to the affected D.O. miners, there is a population of other affected miners who are also expected to experience a significant reduction in risk as a result of eliminating overexposures on their individual shifts.

To estimate how many miners other than the D.O. would be substantially affected, MSHA examined the results from all valid dust samples collected by MSHA inspectors in underground MMUs during 1999 (MSHA, Data file: Inspctor.zip). Within each MMU, the inspector typically takes one full-shift sample on the D.O. and, on the same shift, four or more additional samples representing other occupations. On 896 shifts, at a total of 450 distinct MMUs, the D.O. measurement exceeded the applicable standard, and there were at least three valid measurements for other occupations available for comparison. There was an average of 1.2 non-D.O. measurements in excess of the standard on shifts for which the D.O. measurement exceeded the standard.[25] For non-D.O. measurements that exceeded the standard on the same shift as a D.O. measurement, the mean excess above the standard was approximately (0.8 mg/m^3).[26]

Combining these results with the 21-percent rate of excessive exposures observed for the D.O. on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1.2 other miners, in addition to the one classified as D.O., is currently overexposed on at least 21 percent of all production shifts. Over the course of a working year, the reduction in exposure expected for these affected non-designated occupational (N.D.O.) miners, is 0.17 mg-yr/m^3 (i.e., 21 percent of one year, times 0.8 mg/m^3).

The expected lifetime for all American males, conditional on their having reached 20 years of age, is 73 years (U.S. Census March 1997, Table 18; U.S. Census March 1997, Table 119).[27] On average, the best estimate of the lifetime benefit to exposed miners is expressed by the reduction in prevalence of disease at age 73. To project the reduction in risk of simple CWP and PMF among affected D.O.s and N.D.O.s, MSHA applied its best estimate of dose response to a hypothetical cohort of underground coal miners who work on an MMU exhibiting a pattern of recurrent overexposure, and who, on average, begin working at age 20, retire at age 65, and live to age 73. Strengths and weaknesses of various epidemiological studies were presented in the Health Effects section supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material impairment with respect to simple CWP and PMF. Two of the distinguishing qualities of Attfield and Seixas (1995) are the dose-response relationship over a miner's lifetime and the fact that these data best represent the recent conditions experienced by miners in the U.S. Using this relationship, it is possible to evaluate the impact on risk of both simple CWP and PMF expected from

[22] For details, see the Quantitative Risk Assessment and Significance of Risk sections.

[23] If a different definition of ''exhibiting a recurrent pattern of overexposures'' were used in these analyses the estimate of the reduction in risk and associated benefits would be different. For example, if the criterion were that four or more D.O. bimonthly exposure measurements exceeded the applicable standard then, with 95% confidence, at least 20 shifts would be overexposures in a year of 384 shifts. Using the four as the criterion, this would reduce the population for whom we are estimating benefits, and the estimated number of prevented cases would decrease by 19%.

[24] MSHA estimates an MMU average of 384 production shifts per year. Since miner operators are required to submit five valid designated operator (D.O.) samples to MSHA every two months, there would typically be 30 valid D.O. samples–for each MMU that was in operation for the full year. If dust concentrations on two or more of the sampled shifts exceed the standard, then it follows, at a 95-percent confidence level, that the standard was exceeded on at least six shifts over the full year.

[25] With 95-percent confidence, on shifts for which the D.O. measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 1.11.

[26] With 95-percent confidence, the mean excess is at least 0.72 mg/m^3

[27] Since females have a greater life expectancy than males, the expected benefits would increase if the proportion of female miners increases substantially in the future.

bringing respirable coal mine dust concentrations down to or below the applicable standard on every shift. This is the only contemporary epidemiological study of simple CWP and PMF providing such a relationship.

To estimate the benefits (i.e., number of cases of simple CWP and PMF prevented) of single, full-shift sample and plan verification rules combined, we applied these estimates of risk reduction to the estimated sub-populations of affected miners. As of February 12, 1999, there were 984 producing MMUs; [28] applying the pattern of recurrent overexposures among MMUs as identified in the Quantitative Risk Assessment, 56 percent, by mine size, we estimate there to be 552 affected MMUs (MSHA Table, November 18, 1999; MSHA Table, February 12, 1999). Based on MSHA's experience, we would expect one D.O. and seven N.D.O.s for each shift of production at each MMU. Therefore, among underground coal miners working on an MMU, we estimate 12.5% to be designated occupational miners and 87.5% to be non-designated occupational miners.

The benefits that would accrue to coal miners exposed to respirable coal mine dust and to mine operators, and ultimately to society at large, are substantial and take a number of forms. These proposed rules would reduce a significant health risk to underground coal miners, reducing the potential for illnesses and premature death and their attendant costs to miners, their employers, their families, and society.

The joint promulgation of these rules should realize a positive economic impact on the Department of Labor's (DOL's) Black Lung Program and relatedly on mine operators. The Black Lung Program compensates eligible miners and their survivors under the Black Lung Benefits Act. This program provides monthly payments and medical benefits (diagnostic and treatment) to miners who are found to be totally disabled by black lung disease, including cases of PMF and simple CWP. In 1986, DOL's Employment Standards Administration reported that 12% of approved cases of Black Lung Program were identified as cases of PMF based on chest radiographs, while sixty-four percent had simple CWP based on chest radiographs (ESA, 1986). For miners who stopped working in coal mines after 1969 and for whom the DOL can establish that the miner worked for the same operator for at least one calendar year, and that miner had at least 125 working days in that year, that operator is financially responsible for the miner's Black Lung benefit payment. If a responsible operator cannot be identified for an eligible miner, benefit payments are made by the Black Lung Disability Trust Fund. To the extent that these rules reduce overexposures to respirable coal mine dust, there should be fewer Black Lung Program cases. Therefore, over time, the associated financial outlay by responsible operators through either insurance premiums or direct payments of Black Lung benefits should be lower than would otherwise occur. The financial impact could be substantial (see discussion in Chapter IV, of the PREA). In 1980, the Black Lung Program estimated average lifetime payouts for responsible operators for married miners of about $248,700 dollars, assuming a 7-percent annual increase (ESA, 1980). In fiscal year 1999, 443 claims for Black Lung Benefits were accepted as new cases; sixty-six percent (293) are the financial responsibility of coal mine operators (Peed, 2000).

The most tangible benefit of these rules is the number of cases of simple CWP and PMF which would be prevented. Table XIII–2 presents the estimated number of cases of simple CWP and PMF that would be prevented among the 56 percent of MMUs currently exhibiting a pattern of recurrent overexposures. For all categories of simple CWP and PMF combined, we estimate 37 fewer of these cases among affected miners, than would otherwise occur without the promulgation of single, full-shift sample and plan verification rules. Eleven of these cases would be the most severe form of coal miners pneumoconiosis, PMF, and as such these cases could be interpreted as prevented premature deaths due to occupational exposure to respirable coal mine dust. Since simple CWP predisposes the development of PMF, it is important that it also be prevented (Balaan, *et al.,* 1993).

As discussed in the Significance of Risk sections, MSHA believes this QRA for simple CWP and PMF strikes a reasonable balance based on available data. Yet, our estimates likely understate the true impact of these rules since our analyses are restricted to a sub-population of affected miners, those working at MMUs exhibiting a pattern of recurrent overexposures, not the broader population of coal miners who would benefit from these rules. Furthermore, to estimate the average overexposure which would be prevented, MSHA had to use data collected for compliance purposes, which may not represent typical environmental conditions and the associated respirable coal mine dust exposure in underground coal mines.

The degree to which the exposure level of respirable coal mine dust on sampling shifts may not be representative of typical exposure levels is affected by the following factors:

(1) There exists a positive relationship between coal production and generation of respirable coal mine dust;

(2) Current sampling procedures permit sampling measurements to be taken at the mid-range of the distribution of the level of production—sampling measurements must be taken on shifts with production at least 60% of the average production during the last 30 days and at least 50% of average production for the last valid set of bimonthly samples for inspector and operator samples, respectively;

(3) Miners have reported and MSHA data have demonstrated lower levels of production on sampling shifts versus non-sampling shifts (MSHA, September 1993);

(4) On some sampling shifts, miners have reported that more engineering controls may be used than on other shifts, thus reducing the measured amount of respirable coal mine dust;

(5) MSHA analyses have demonstrated, even when controlling for production, in mines with fewer than 125 employees, on continuous mining MMUs, respirable coal mine dust exposures were much higher during the unannounced Spot Inspection Program (SIP) sampling shifts than on shifts operators sampled—this is consistent with the effect of increasing engineering controls on shifts during which bimonthly samples are conducted compared to the level of use of engineering controls used on shifts for which the operator does not expect sampling to be conducted given the same production level (Denk, 1993);

(6) Across mine size, designated area samples have been found to be larger for shifts on which unannounced compliance sampling occurred compared to operator sampling shifts—in one study they differed by at least a factor of 40 percent in large mines and 100 percent in the smallest mines (Ibid., pp. 211–212); and

(7) Existing MSHA technical information indicates that some reduction in production levels occurs during some sampling periods on longwalls (Denk, 1990).

Therefore, at a bare minimum, over an occupational lifetime (45-years) for miners who live to age 73 who worked

[28] Nine hundred and eighty-four refers to the number of MMUs operating on February 12, 1999. The 1,443 number mentioned previously refers to all MMUs in operation at any time in 1999.

at MMUs exhibiting a pattern of recurrent overexposures, we estimate at least 37 fewer cases of pneumoconiosis (simple CWP and PMF) than would otherwise occur without the promulgation of these rules.

Our current quantitative estimate of benefits demonstrates and qualitative discussions punctuate that these rules would have a significant positive impact on the health of our nation's coal miners when promulgated. Yet, due to the limitations in these data, we believe our benefit estimate may understate the number of cases of simple CWP and PMF which would be prevented over an occupational lifetime.

MSHA believes that cases of simple CWP and PMF would also be prevented among other types of underground miners, such as roofbolters working in designated areas (D.A.). Based on MSHA experience it is reasonable to expect roofbolter D.A.'s pattern of overexposures for respirable coal mine dust to be similar to that for miners with the highest exposure on a MMU. If so, we would expect 13 additional cases of simple CWP and PMF to be prevented. Affected D.A.s include D.A.s who work at the 56 percent of the MMUs under consideration who are exposed to dust concentrations similar to the D.O., over a 45-year occupational lifetime (MSHA Table, November 1999; MSHA Table, February 1999).

Also, it is reasonable to expect surface miners' health to be further protected by the promulgation of the SFSS rule alone since it would identify and require resolution of overexposures not previously identified and may thereby lower some miners' cumulative exposure to respirable coal mine dust. Furthermore, to the extent that cumulative exposure to respirable coal mine dust affects other adverse health outcomes, such as silicosis and chronic obstructive pulmonary disease, it is reasonable to expect a reduction in the number of cases and/or in the severity of cases for these diseases among surface and underground coal miners.

Although the effect cannot readily be quantified, to the extent that these rules would also reduce the cumulative exposure to respirable coal mine dust among some miners working in those MMUs currently not exhibiting overexposures, it is reasonable to expect that we would observe an incremental benefit among that sub-population of coal miners. Moreover, to the extent that the cumulative dust exposure is reduced for miners working in the ''outby'' areas, away from the mining face (i.e., MMU) where coal is extracted from the coal seam, they too may realize occupational health benefits due to the simultaneous promulgation of these proposals. Therefore, our best estimate of 37 prevented cases of simple CWP and PMF, combined, among all affected miners likely underestimates the true benefit realized by the coal mining workforce through the reduction of overexposures to no more than the applicable standard on each shift.

Clearly, PMF is associated with premature death. Since simple CWP may evolve to PMF, even after occupational exposure has ceased, it has the propensity to become a life-threatening illness. By reducing the total number of simple CWP and PMF cases among affected miners from 259 to 222, over 45 years,[29] these standards are projected to prevent an average of four cases of simple CWP and PMF for each 5-year interval.

For all those reasons previously identified, MSHA believes that its estimate of 37 prevented cases of simple CWP and PMF over a 45 year working life understates the true number of cases of simple CWP and PMF which would be prevented. This belief is further supported by the fact that during the past few years, the Black Lung Benefits Program has been approving roughly 400 claims each year. These claims come from individuals whose exposure for the most part came after the current standard of 2.0 was established in 1972. Thus, we believe the consistent identification, from year to year, of hundreds of new cases of simple CWP and PMF per year into the Black Lung Benefits Program supports our belief that the true lifetime occupational health benefits of the proposed rules are higher than we have estimated. Even assuming that the number of new claims would decline in future years simply due to the continuing decline in the number of coal miners, MSHA expects that assuring that future exposures are maintained below the 2.0 exposure limit will reduce the number of new cases of simple CWP and PMF by considerably more than 1 per year.

In addition to the prevention of simple CWP and PMF, each of the 8,640 affected miners at MMUs exhibiting a pattern of recurrent overexposures will realize some health benefit by limiting his or her cumulative exposure to respirable coal mine dust to no more than the applicable standard on each and every shift.

The expected number of prevented cases of simple CWP and PMF would not be realized for some time even after the pattern of overexposures has been minimized or eliminated. This is due, in part, to the latency (that is, the disease does not develop immediately after exposure) of the development of simple CWP and PMF and the pre-existing occupational exposure histories of members of the current coal mining workforce. Our estimated benefit is based on the estimated number of underground coal miners working at the mine face, 17,280. If the size of this workforce significantly changed in the future and the projected pattern of prevented overexposures remained the same, the number of cases of prevented simple CWP and PMF would need to be adjusted to account for the change.

Finally, even standing alone, without simultaneously requiring that the effectiveness of underground mine ventilation plans be verified (i.e., the Plan Verification NPRM), the proposed standard allowing MSHA to use single, full-shift samples to identify overexposures requiring corrective action would provide miners with health benefits.[30] Both the prospect of being cited for overexposure and the actual issuance of additional citations due to this rule would compel mine operators to be more attentive to the level of respirable dust in their mines. Therefore, it is reasonable to expect, over time, a further decline in the number of shifts during which the concentration of respirable coal mine dust is at or above the applicable standard. Thus, implementation of the single, full-shift sample strategy will, in and of itself, on average, lower miners' cumulative exposure to respirable coal mine dust. Since cumulative exposure to respirable coal mine dust is the main determinant in the development of both simple CWP and PMF, the Agencies are confident that the use of single, full-shift samples, by themselves, even without the help of a verified dust control plan, would result in better health protection to miners.

Various data, assumptions and caveats were used to conduct the quantitative risk assessment, significance of risk discussion, and benefits analyses. Therefore, we request any information which would enable us to conduct more accurate analyses of the estimated health benefits of the single, full-shift sample rule and plan verification rule, both individually, and in combination.

[29] Applying the estimated prevalence rate of 3.0 percent to the estimated population of affected miners (8,640) results in an estimate of 259 cases of simple CWP and PMF.

[30] See detailed discussion in the Significance of Risk section.

TABLE XIII–2.—OVER A WORKING LIFETIME AMONG AFFECTED MINERS, ESTIMATED NUMBER OF CASES OF CWP [A] AND PMF [B] PREVENTED DUE TO THE IMPLEMENTATION OF SINGLE-SAMPLE AND PLAN VERIFICATION

Type of miner	Affected miners, n=	Simple CWP categories 1, 2, 3 or PMF		Simple CWP categories 2 or 3 or PMF		PMF	
		Reduction in risk [c]	Prevented cases, n=	Reduction in risk [c]	Prevented cases, n=	Reduction in risk [c]	Prevented cases, n=
Affected Designated Occupational Miners [d]	1,080	18.0/1,000	19.4	9.8/1,000	10.6	5/1,000	5.5
Affected Non-Designated Occupational Miners [e]	7,560	2.3/1,000	17.4	1.3/1,000	9.8	1/1,000	5.3
Total ..	8,640	na	37	na	20	na	11

[a] Simple CWP: simple coal workers' pneumoconiosis.
[b] PMF: progressive massive fibrosis.
[c] Reduction in risk per 1,000 affected miners, over a 45-year working lifetime.
[d] Affected Designated Occupation (D.O.) Miners: includes all miners who work at the 56-percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the D.O., over a 45-year occupational lifetime.
[e] Affected Non-Designated Occupation (Non-D.O.) Miners: includes all underground faceworkers under consideration who are not classified as the D.O.

B. Regulatory Flexibility Certification and Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires MSHA and NIOSH to conduct an analysis of the effects of the single, full-shift sample rule on small entities. That analysis is summarized here; a copy of the full analysis is included in Chapter V of the Agencies' PREA in support of the proposed rule. The Agencies encourage the mining community to provide comments on this analysis.

The Small Business Administration generally considers a small entity in the mining industry to be one with 500 or fewer workers. MSHA has traditionally defined a small mine to be one with fewer than 20 workers, and has focused special attention on the problems experienced by such mines in implementing safety and health rules. Accordingly, the Agencies have separately analyzed the impact of the joint notice proposed rule both on mines with 500 or fewer workers and on those with fewer than 20 workers.

Pursuant to the Regulatory Flexibility Act, MSHA must determine whether the costs of the joint notice proposed rule constitute a ''significant impact on a substantial number of small entities.'' Pursuant to the Regulatory Flexibility Act, if an Agency determines that a proposed rule would not have such an impact, it must publish a ''certification'' to that effect. In such a case, no additional analysis is required (5 U.S.C. § 605). In evaluating whether certification is appropriate, MSHA utilized a ''screening test,'' comparing the costs of the joint notice proposed rule to the revenues of the affected coal sector. If the estimated costs are less than 1 percent of revenues for the affected entities, then the rule is assumed not to have a significant impact on small mine operators.

Table XIII–3 compares, for small underground and surface coal mines (using both MSHA's and SBA's definition), MSHA's estimated total annual compliance costs of the joint notice proposed rule to estimated annual revenues.

TABLE XIII–3.—ESTIMATED YEARLY REVENUES AND COSTS FOR SINGLE, FULL-SHIFT SAMPLE PROPOSED RULE FOR UNDERGROUND AND SURFACE COAL MINES

[dollars in thousands]

Mine size	Estimated yearly costs [a]	Estimated revenues [b]	Costs as percentage of revenues
Underground Coal Mines			
<20	$369.0	$249,418	0.1
≤500 [c]	1,770.5	6,883,339	0.03
Surface Coal Mines			
<20	1.1	498,935	<0.01
≤500	5.2	10,864,156	<0.01

[a] Estimated yearly costs are composed of only annual costs. There are no first year costs or annualized costs in the proposed rule.

[b] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations and Variances, based on 1997 Final MIS data (Quarter 1—Quarter 4), CM441, Cycle 1997/84; and U.S. Department of Energy, Energy Information Administration, *Annual Energy Review 1998,* DOE/EIA–0384(98), July 1999, p. 203.
[c] Includes mines with fewer than 20 employees.

Table XIII–3 shows that under either MSHA's or SBA's definition of a small mine, for underground and/or surface coal mines, the estimated costs would be significantly less than one percent of revenues. As a result, MSHA is certifying that the single, full-shift sample rule for underground and surface coal mines would not have a ''significant impact on a substantial number of small entities,'' and has performed no further analyses.

XIV. Other Statutory Requirements

A. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

B. Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). The proposed SFSS rule has annual burden hours beginning in the first year and recurring every year thereafter. Both underground and surface coal mines have paperwork provisions under the proposed SFSS rule. Underground coal mine operators would incur 2,985 annual burden hours and associated costs of $70,822. Surface coal mine operators would incur 29 annual burden hours and associated costs of about $1,009. These burden hours relate to operators performing abatement sampling, completing dust data cards, mailing samples to MSHA for analysis, writing respirable dust plans, and posting respirable dust plans. Table XIV–1 shows the burden hours and associated costs for each SFSS paperwork provision by mine size for underground and surface mines.

TABLE XIV–1.—SUMMARY OF MINE OPERATORS' ANNUAL PAPERWORK BURDEN HOURS AND COSTS ARISING FROM THE SINGLE, FULL-SHIFT SAMPLE PROPOSED RULE *

Detail	<20 emp.		≥20 emp. ≤500		> 500 emp.		Total	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
UNDERGROUND COAL MINES								
Abatement Sampling	575	$13,872	2,080	$50,181	30	$724	2,685	$64,776
Dust Data Cards	14	716	52	2,589	1	37	67	3,342
Send Samples to MSHA	48	910	173	3,292	2	47	224	4,250
Write Dust Plan	3	149	6	299	0	0	9	448
Post or Give Dust Plan	0.1	2	0.2	4	0	0	0	6
Total Underground	640	15,649	2,311	54,364	33	809	2,985	70,822
SURFACE COAL MINES								
Abatement Sampling	5	$121	10	$241	0	$0	15	$362
Dust Data Cards	0.1	6	0.3	12	0	0	0.4	19
Send Samples to MSHA	0.4	8	0.8	16	0	0	1.2	24
Write Dust Plan	3	149	9	448	0	0	12	597
Post or Give Dust Plan	0.1	2	0.3	6	0	0	0.4	7
Total Surface	9	286	20	723	0	0	29	1,009
UNDERGROUND AND SURFACE COAL MINES								
Abatement Sampling	580	$13,993	2,090	$50,422	30	$724	2,700	$65,138
Dust Data Cards	15	722	52	2,602	1	37	68	3,361
Send Samples to MSHA	48	918	174	3,308	2	47	225	4,273
Write Dust Plan	6	299	15	747	0	0	21	1,046
Post or Give Dust Plan	0	4	1	9	0	0	1	13
Grand Total	649	15,935	2,332	57,087	33	809	3,014	73,831

* Totals may vary due to rounding.

MSHA invites public comments and is particularly interested in comments which:

1. Evaluate whether the proposed collection of information (presented here and in MSHA's PREA) is necessary for the proper performance of the functions of MSHA, including whether the information will have practical utility;

2. Evaluate the accuracy of MSHA'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 respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.*, permitting electronic submissions of responses.

Submission

MSHA and NIOSH have submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, OMB New Executive Office Building, 725 17th St., NW, Rm. 10235, Washington, DC 20503, Attn: Desk Officer for MSHA. Submit written comments on the information collection not later than September 5, 2000.

MSHA's paperwork submission summarized above is explained in detail in the PREA. The PREA includes the estimated costs and assumptions for each proposed paperwork requirement related to this proposed rule. A copy of the PREA is available from MSHA. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

C. National Environmental Protection Act

The National Environmental Policy Act (NEPA) of 1969 requires each Federal agency to consider the environmental effects of proposed actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. MSHA has reviewed the proposed standard in accordance with the requirements of the NEPA (42 U.S.C. 4321 *et seq.*), the regulation of the Council on Environmental Quality (40 CFR Part 1500), and the Department of Labor's NEPA procedures (29 CFR Part 11). As a result of this review, MSHA has preliminarily determined that this proposed standard will have no significant environmental impact.

Commenters are encouraged to submit their comments on this determination.

D. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

E. Executive Order 12988: Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, protection of children from environmental health risks and safety risks, MSHA has evaluated the environmental health or safety effects of the proposed rule on children. The Agency has determined that this proposal would not have an adverse impact on children.

G. Executive Order 13084 Consultation and Coordination with Indian Tribal Governments

MSHA certifies that this proposed rule does not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13132 (Federalism)

We have reviewed this rule in accordance with Executive Order 13132 regarding federalism, and have determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

XV. Public Hearings

The Agencies will hold public hearings on the proposed rule. The hearings will be held in Prestonsburg, Kentucky, (Jenny Wiley State Resort Park); Morgantown, West Virginia; and Salt Lake City, Utah. The hearing dates, times, and specific locations will be announced by a separate document in the **Federal Register**. The hearings will be held under Section 101 of the Federal Mine Safety and Health Act of 1977.

Appendix A—The Effects of Averaging Dust Concentration Measurements

MSHA's measurement objective in collecting a dust sample is to determine the average dust concentration at the sampling location on the shift sampled. As discussed in the main text, MSHA and NIOSH find that a single, full-shift measurement can accurately represent the average full-shift dust concentration being measured. Nevertheless, because of sampling and analytical errors inherent in even the most accurate measurement process, the true value of the average dust concentration on the sampled shift can never be known with complete certainty. However accurate the representation, a measurement can provide only an estimate of the true dust concentration.

Throughout this appendix, some public comments made to February 18 and June 6, 1994 notices relevant to issues regarding single, full-shift sampling will be cited and addressed to emphasize key findings on accuracy and the effects of averaging dust concentration measurements. Some previous commenters contended that MSHA should not rely on single samples for making noncompliance determinations, because an average of results from multiple samples would estimate the true dust concentration more accurately than any single measurement.

Contrary to the views expressed by these commenters, averaging a number of measurements does not necessarily improve the accuracy of an estimation procedure. Consider, for example, an archer aiming at targets mounted at random and possibly overlapping positions on a long partition. Each arrow might be aimed at a different target. Suppose that an observer, on the opposite side of the partition from the archer, cannot see the targets but must estimate the position of each bull's eye by locating protruding arrowheads.

Each protruding arrowhead provides a measurement of where some bull's eye is located. If two arrowheads are found on opposite ends of the partition, averaging the positions of these two arrowheads would not be a good way of determining where any real target is located. To estimate the location of an actual target, it would generally be preferable to use the position of a single arrow. The average would represent nothing more than a ''phantom'' target somewhere near the center, where the archer probably did not aim on either shot and where no target may even exist.

The archery example can be extended to illustrate conditions under which averaging dust concentration measurements does or does not improve accuracy. If each arrowhead is taken to represent a full-shift dust sample, then the true average dust concentration at the sampling location on a given shift can be identified with the location of the bull's eye at which the corresponding arrow was aimed. The accuracy of a measurement refers to how closely the measurement can be expected to come to the quantity being measured. Statistically, accuracy is the combination of two distinct concepts: precision, which pertains to the consistency or variability of replicated measurements of exactly the same quantity; and bias, which pertains to the average amount by which these replicated measurements deviate from the quantity being measured. Bias and precision are equally important components of measurement accuracy.

To illustrate, arrows aimed at the same target might consistently hit a sector on the

lower right side of the bull's eye. The protruding arrowheads would provide more or less precise measurements of where the bull's eye was located, depending on how tightly they were clustered; but they would all be biased to the lower right. On the other hand, the arrows might be distributed randomly around the center of the bull's eye, and hence unbiased, but spread far out all over the target. The protruding arrowheads would then provide unbiased but relatively imprecise measurements.

More complicated situations can easily be envisioned. Arrows aimed at a second target would provide biased measurements relative to the first target. Alternatively, if the archer always aims at the same target, the first shot in a given session might tend to hit near the center, with successive shots tending to fall off further and further to the lower right as the archer's arm tires; or shots might progressively improve, as the archer adjusts aim in response to prior results.

Averaging reduces the effects of random errors in the archer's aim, thereby increasing precision in the estimation procedure. If the archer always aims at the same target and is equally adept on every shot (i.e., if the arrowheads are all randomly and identically distributed around a fixed point), then averaging improves the estimate's precision without introducing any bias. Averaging in such cases provides a more accurate method of estimating the bull's eye location than reliance on any single arrowhead. If, however, the archer intentionally or unintentionally switches targets, or if the archer's aim progressively deteriorates, then averaging can introduce or increase bias in the estimate. If the gain in precision outweighs this increase in bias, then averaging several independent measurements may still improve accuracy. However, averaging can also introduce a bias large enough to offset or even surpass the improvement in precision. In such cases, the average position of several arrowheads can be expected to locate the bull's eye less accurately than the position of a single arrowhead.

I. Multi-Locational Averaging

Some previous commenters opposed MSHA's use of a single, full-shift measurement for enforcement purposes, claiming that determinations based on such measurements would be less accurate than those made under MSHA's existing enforcement policy of averaging multiple measurements taken on an MMU. There are two distinctly different types of multi-locational measurement averages that could theoretically be compiled on a given shift: (1) the average might combine measurements taken for different occupational locations and (2) the average might combine measurements all taken for the same occupational location. For MMUs, the averages used in MSHA's sampling program usually involve measurements taken for different occupational locations on the same shift. These are averages of the first type. MSHA's sampling program has never utilized averages of the second type. Therefore, those commenters who claimed that reliance on a single, full-shift measurement would reduce the accuracy of noncompliance determinations, as compared to MSHA's existing enforcement policy, are implicitly claiming that accuracy is increased by averaging across different occupational locations.

Averaging measurements obtained from different occupational locations on an MMU is like averaging together the positions of arrows aimed at different targets. The average of such measurements is an artificial, mathematical construct that does not correspond to the dust concentration for any actual occupational location. Therefore, this type of averaging introduces a bias proportional to the degree of variability in actual dust concentration at the various locations averaged.

The gain in precision that results from averaging measurements taken at different locations outweighs this bias only if variability from location to location is smaller than variability in measurement error. However, commenters opposed to MSHA's use of single, full-shift measurements for enforcement purposes argued that this is not generally the case and even submitted data and statistical analyses in support of this position. Commenters in favor of noncompliance determinations based on a single, full-shift measurement agreed that variability in dust concentration is extensive for different occupational locations and argued that MSHA's existing policy of measurement averaging is not sufficiently protective of miners working at the dustiest locations.

Since an average of the first type combines measurement from the dustiest location with measurements from less dusty locations, it must always fall below the best available estimate of dust concentration at the dustiest location. In effect, averaging across different occupational locations dilutes the dust concentration observed for the most highly exposed occupations or dustiest work positions. Therefore, such averaging results in a systematic bias against detecting excessive dust concentrations for those miners at greatest risk of overexposure.

A somewhat better case can be made for the second type of multi-locational averaging, which combines measurements obtained on the same shift from a single occupational location. As some previous commenters pointed out, however, there is ample evidence that spatial variability in dust concentration, even within relatively small areas, is frequently much larger than variability due to measurement error. Therefore, the same kind of bias introduced by averaging across occupational locations would also arise, but on a lesser scale, if the average measurement within a relatively small radius were used to represent dust concentration at every point in the atmosphere to which a miner is exposed. A miner is potentially exposed to the atmospheric conditions at any valid sampling location. Consistent with the Mine Act and implementing regulations, MSHA's enforcement strategy is to limit atmospheric dust concentration wherever miners normally work or travel. Therefore, the more spatial variability in dust concentration there is within the work environment, the less appropriate it is to use measurement averaging to enforce the applicable standard by averaging measurements obtained at different sampling locations.

Some of the previous comments implied that instead of measuring average dust concentration at a specific sampling location, MSHA's objective should be to estimate the average dust concentration throughout a miner's ''breathing zone'' or other area near a miner. If estimating average dust concentration throughout some zone were really the objective of MSHA's enforcement strategy, then averaging measurements made at random points within the zone would improve precision of the estimate without introducing a bias. This type of averaging, however, has never been employed in either the MSHA or operator dust sampling programs. MSHA's current policy of averaging measurements obtained from different zones does not address spatial variability in the area immediately surrounding a sampler unit. Therefore, even if averaging measurements from within a zone were somehow beneficial, this would not demonstrate that MSHA's existing enforcement policy is more reliable than basing noncompliance on a single, full-shift measurement.

Furthermore, if the objective were really to estimate average dust concentration throughout some specified zone on a given shift, then it would often be necessary to obtain far more than five simultaneous measurements within the zone. This is not only because of potentially large local differences in dust concentration. In order to use such measurements for enforcement purposes, variability in dust concentration within the sampled area would have to be estimated along with the average dust concentration itself. As some previous commenters correctly pointed out, doing this in a statistically valid way would generally require at least twenty to thirty measurements. One of these commenters also pointed out that such an estimate, based on even this many measurements in the same zone, could be regarded as accurate only under certain questionable assumptions about the distribution of dust concentrations. This commenter calculated that hundreds of measurements would be required in order to avoid these tenuous assumptions. Clearly, this shows that the objective of estimating average dust concentration throughout a zone is not consistent with any viable enforcement strategy to limit dust concentration on each shift in the highly heterogeneous and dynamic mining environment. The large number of measurements required to accurately characterize dust concentration over even a small area merely demonstrates why it is not feasible to base enforcement decisions on estimated atmospheric conditions beyond the sampling location.

MSHA and NIOSH recognize that a single, full-shift measurement will not provide an accurate estimate of average dust concentration anywhere beyond the sampling location. The Mine Act, however, does not require MSHA to estimate average dust concentration at locations that are not sampled or to estimate dust concentration averaged over any zone or region of the mine.

Instead, the Mine Act requires that a miner will not be exposed to excessive dust wherever he/she normally works or travels. This can be accomplished by maintaining the average dust concentration at each valid sampling location at or below the applicable standard during each shift.

II. Multi-Shift Averaging

Some previous commenters maintained that in order to reduce the risk of erroneous noncompliance determinations, MSHA should average measurements obtained from the same occupation on different shifts. These commenters contended that the average of measurements from several shifts represents the average dust concentration to which a miner is exposed more accurately than a single, full-shift measurement. Other commenters, who favored noncompliance determinations based on single, full-shift measurements, claimed that conditions are sometimes manipulated so as to produce unusually low dust concentrations on some of the sampled shifts. These commenters suggested that, due to these unrepresentative shifts, multi-shift averaging can yield unrealistically low estimates of the dust concentration to which a miner is typically exposed. Some of these commenters also argued that the Mine Act requires the dust concentration to be regulated on each shift, and that multi-shift averaging is inherently misleading in detecting excessive dust concentration on an individual shift.

Those advocating multi-shift averaging generally assumed that the measurement objective is to estimate a miner's average dust exposure over a period longer than an individual shift. This assumption is flawed, as shown by the fact that section 202(b) of the Mine Act specifies that each operator will continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift at or below the applicable standard. Some of those advocating multi-shift averaging, however, suggested that MSHA should average measurements obtained on different shifts even if the quantity of interest is dust concentration on an individual shift. These commenters argued that averaging smooths out the effects of measurement errors, and that therefore the average over several shifts would represent dust concentration on each shift more accurately than the corresponding individual, full-shift measurement.

The Secretaries recognize that there are circumstances, not experienced in mining environments, under which averaging across shifts could improve the accuracy of an estimate for an individual shift. Just as averaging the positions of arrows aimed at nearly coinciding targets might better locate the bull's eye than the position of any individual arrow, the gain in precision obtained by averaging dust concentrations observed on different shifts could, under analogous circumstances, outweigh the bias introduced by using the average to estimate dust concentration for an individual shift. This would be the case, however, only if variability in dust concentration among shifts were small compared to variability due to measurement imprecision. It would do no good to average the location of arrows aimed at different targets unless the targets were at nearly identical locations.

To the contrary, several previous commenters pointed out that variability in dust concentration from shift to shift tends to be much larger than variability due to measurement error and introduced evidence in support of this observation. Measurements on different shifts are like arrows aimed at widely divergent targets. The more that conditions vary, for any reason, from shift to shift, the more bias is introduced by using a multi-shift average to represent dust concentration for any individual shift. Under these circumstances, any improvement in precision to be gained by simply averaging results is small compared to the bias introduced by such averaging. Therefore, the Secretaries have concluded that MSHA's existing practice of averaging measurements collected on different shifts does not improve accuracy in estimating dust concentration to which a miner is exposed on any individual shift. To paraphrase one previous commenter, averaging Monday's exposure measurement with Tuesday's does not improve the estimate of Monday's average dust concentration.

Some previous commenters argued that since the risk of pneumoconiosis depends on cumulative exposure, the measurement objective should be to estimate the dust concentration to which a miner is typically exposed and to identify cases of excessive dust concentration over a longer term than a single shift. Other previous commenters claimed that a multi-shift average does not provide a good estimate of either typical dust concentrations or exposures over the longer term. These commenters claimed that different shifts are not equally representative of the usual atmospheric conditions to which miners are exposed, implying that the average of measurements made on different shifts of a multi-day MSHA inspection tends to systematically underestimate typical dust concentrations.

The Secretaries interpret the Mine Act as requiring that dust concentrations be kept at or below the applicable standard on each and every shift. Nevertheless, the Secretaries recognize that, under certain conditions, the average of measurements from multiple shifts can be a better estimate of ''typical'' atmospheric conditions than a single measurement. This applies, however, only if the sampled shifts comprise a random or representative selection of shifts from whatever longer term may be under consideration. As shown below, evidence to the contrary exists, supporting those commenters who maintained that measurements collected over several days of a multi-day MSHA inspection do not meet this requirement. Therefore, the Secretaries have concluded that averaging such measurements is likely to be misleading even for the purpose of estimating dust concentrations to which miners are typically exposed.

Whether the objective is to measure average dust concentration on an individual shift or to estimate dust concentration typical of a longer term, the arguments presented for averaging across shifts all depend on the assumption that every shift sampled during an MSHA inspection provides an unbiased representation of dust exposure over the time period of interest.[31] To check this assumption, MSHA performed a statistical analysis of multi-shift MSHA inspections carried out prior to the SIP. This analysis, placed into the record in September 1994, examined the pattern of dust concentrations measured over the course of these multi-shift inspections and compared results from the final shift with results from a subsequent single-shift sampling inspection (Kogut, September 6, 1994b).

The analysis found that dust concentrations measured on different shifts of the same MSHA inspection were not randomly distributed. The later samples tended to show significantly lower results than earlier samples, indicating that dust concentrations on later shifts of a single inspection may decline in response to the presence of an inspector. Furthermore, the analysis provided evidence that the reduction in dust concentration tends to be reversed after the inspection is terminated. These two results led to the conclusion that averaging dust concentrations measured on different shifts of a multi-day MSHA inspection introduces a bias toward unrealistically low dust concentrations.

One previous commenter questioned the validity of this analysis, stating that ''there is absolutely no basis in the * * * report for the assertion that the trend is reversed after the inspection is terminated.'' This commenter apparently overlooked Table 3 of the report. That table shows a statistically significant reversal at those mine entities included in the analysis that were subsequently inspected under MSHA's SIP. Dust concentrations measured at these mine entities had declined significantly between the first and last days of the multi-shift inspection. It was primarily to address the commenter's implication that these reductions reflected permanent ''adjustments in dust control measures'' that the analysis included a comparison with the subsequent SIP inspection. An increase, representing a reversal of the previous trend, was observed on the single shift of the subsequent inspection, relative to the dust concentration measured on the final shift of the previous multi-shift inspection. This reversal was found to be ''statistically significant at a confidence level of more than 99.99 percent.''

The same commenter also stated that MSHA ''* * * fails to address the systematic [selection] bias of the study. MSHA only does multiple day sampling when the initial results are higher, but not out of compliance.'' It is true that in order to be selected for revisitation, a mine entity must have shown relatively high concentrations on the first shift—though not, in the case of an MMU, so high as to warrant a citation on first shift. Since no experimental data were available on mine entities randomly selected to receive multi-shift inspections, the only cases in which patterns over the course of a multi-shift inspection could be examined

[31] Technically, the assumption is that dust concentrations on all shifts sampled are independently and identically distributed around the quantity being estimated.

were cases selected for multi-shift inspection under these criteria.

Although the impact of the selection criteria was not explicitly addressed, it was recognized that entities selected for multi-day inspections do not constitute a random selection of mine entities. This recognition motivated, in part, the report's comparison of the final shift measurement to the dust concentration measured during a subsequent single-shift inspection. The magnitude of the average reversal indicates that most of the reduction observed over the course of the multi-shift inspection cannot be attributed to the selection criteria. Furthermore, it was not only mine entities with relatively low dust concentration measurements that were left out of the study group. Mine entities with the highest dust concentration measurements were immediately cited based on the average of measurements taken and excluded from the group subjected to multi-shift dust inspections. Therefore, the effect on the analysis of selecting mine entities with relatively high initial dust concentration measurements was largely offset by the effect of excluding those entities with even higher initial measurements. In any event, the magnitude of the average reduction between first and last shifts of a multi-shift inspection was significantly greater than what can be explained by selection for revisitation due to measurement error on the first shift sampled.

The assumption that multiple shifts sampled during a single MSHA inspection are equally representative is clearly violated if, as some commenters alleged, operating conditions are deliberately altered after the first shift in response to the continued presence of an MSHA inspector and then changed back after the inspector leaves. However, if samples are collected on successive or otherwise systematically determined shifts or days, the assumption can also be violated by changes arising as part of the normal mining cycle. As one commenter pointed out, multi-shift averaging within a single MSHA inspection potentially introduces biases typical of ''campaign sampling,'' in which observations of a dynamic process are clustered together over a relatively narrow time span. In order to construct an unbiased, multi-shift average for each phase of mining activity, it would be necessary to collect samples from several shifts operating under essentially the same conditions. Alternatively, to construct an unbiased, multi-shift estimate of dust concentration over a longer term, it would be necessary to collect samples from randomly selected shifts over a period great enough to reflect the full range of changing conditions. Neither requirement is met by multi-shift MSHA inspections because (1) the mine environment is dynamic and no two shifts are alike and (2) MSHA inspectors are not there long enough to observe every condition in their inspection.

Based on the analysis presented by Kogut (September 6, 1994b) and also on public comments received in response to the February 18 and June 6, 1994, notices, the Secretaries have concluded that it should not be assumed that multiple shifts sampled during a single MSHA inspection are equally representative of atmospheric conditions to which a miner is typically exposed. This conclusion undercuts the rationale for multi-shift averaging within a single MSHA inspection, regardless of whether the objective is to estimate dust concentration for the individual shifts sampled as it is for MSHA inspector sampling or for typical shifts over a longer term as implied by some commenters. Measurements collected by MSHA on consecutive days or shifts of the same inspection do not comprise a random or otherwise representative sample from any larger population of shifts that would properly represent a long-term exposure or a particular phase of the mining cycle. Therefore, there is no basis for assuming that multi-shift averaging improves accuracy or reduces the risk of an erroneous enforcement determination.

Appendix B—Why Individual Measurements are Unbiased

The accuracy of a measurement depends on both precision and bias (Kennedy, *et al.*, 1995). Precision refers to consistency or repeatability of results, and bias refers to an error that is equally present in every measurement. Since the amount of dust present on a filter capsule is measured by subtracting the pre-exposure weight from the post-exposure weight, any bias present in both weight measurements is mathematically canceled out by subtraction. A control filter capsule is pre- and post-weighed along with the exposed filter capsules. The weight gain of each exposed capsule is adjusted by subtracting the weight gain or loss of the control filter capsule. Consequently, any bias due to differences in pre- and post-exposure laboratory conditions, or to changes introduced during storage and handling of the filter capsules, is also mathematically canceled out. Therefore, since respirable dust is defined by section 202(e) of the Mine Act (30 U.S.C. 842(e)) to be whatever is measured by an approved sampler unit, the Secretaries have concluded that a single, full-shift measurement made with an approved sampler unit provides an unbiased representation of average dust concentration for the shift and sampling location sampled. Some previous commenters, however, suggested that MSHA's sampling and analytical method is subject to systematic errors that would have the same effect on all measurements. These comments are addressed in this appendix.

I. The Value of the MRE Conversion Factor

The current U.S. coal mine dust standard is based on studies of British coal miners. In these studies, full-shift dust measurements were made using a sampler employing four horizontal plates which removed the large-sized particles by gravitational settlement (simulating the action of the nose and throat) and collecting on a pre-weighed filter those particles which are normally deposited in the lungs (Goddard, *et al.*, 1973). This instrument, known as the Mining Research Establishment (MRE) sampler, was designed to collect airborne dust according to a collection efficiency curve, developed by the British Medical Research Council (BMRC) to approximate the deposition of inhaled particles in the lung. Because the MRE instrument was large and cumbersome, other samplers using a 10-mm nylon cyclone were developed for taking samples of respirable dust in U.S. coal mines. However, these cyclone-based samplers collected less dust than the MRE instrument. Therefore, a factor was derived (1.38) to convert measurements obtained with the cyclone-based samplers to measurements obtained with the MRE instrument.

Two previous commenters noted that the 1.38 conversion factor was derived from a comparison of MRE measurements to measurements obtained using pumps made by two manufacturers: Mine Safety Appliances Co. and Unico. These commenters noted that there was some variability in these comparisons that MSHA and NIOSH did not consider in estimating CV_{total}, and stated that MSHA and NIOSH should therefore make allowances for any error or uncertainty in the conversion factor. It was also noted that the report deriving the conversion factor showed that Mine Safety Appliances Co. pumps more closely approximated MRE concentrations than Unico pumps, indicating that the 1.38 conversion factor (derived empirically using both types of pumps) may systematically overestimate the MRE-equivalent dust concentration for Mine Safety Appliances Co. samplers specifically. This commenter argued that such potential bias in the conversion factor should be addressed in order to account for the possibility of a systematic error in the conversion.

The study referred to these previous commenters involved collecting side-by-side samples using MRE and cyclone-based samplers (Tomb, *et al.*, 1973). The data showed that multiplying the cyclone sample concentrations by a constant factor of 1.38 gave values in reasonable agreement with MRE measurements. Consequently, a conversion factor of 1.38 was adopted for use with approved sampler units equipped with the 10-mm nylon cyclone.

Variability in the operating characteristics of individual sampler units is expressed by $CV_{sampler}$. In response to the comment on potential bias, MSHA and NIOSH reviewed the original report recommending the 1.38 MRE conversion factor. This report contained both an empirical determination, using side-by-side comparison data collected in underground coal mines, and a theoretical determination of the conversion factor. Two sets of field data were collected: one set was collected by mine inspectors who visited 200 coal mines across the U.S.; the other set was collected by investigators from MSHA's Pittsburgh laboratory at 24 coal mines. Linear regression was used to analyze both sets of data, with the slope of the regression line representing the conversion factor. The theoretical determination suggested that the conversion factor should be close to a value of 1.35. Analysis of the district mine inspector data resulted in a conversion factor of 1.38, while analysis of the laboratory investigator data suggested a greater conversion factor of 1.45.

Because the conversion factor derived from the inspector data came closer to the theoretical value, the former U.S. Bureau of Mines' Pittsburgh Technical Support Center

(in the Department of Interior) recommended that 1.38 be the value adopted for any approved sampler unit operating at 2.0 L/min and equipped with a 10-mm nylon cyclone. This recommendation was subsequently accepted. The 1.38 conversion factor was not, as implied by the commenters, meant to represent the average value to be used with two different types of sampler unit, one of which is no longer in use. Instead, based largely on the theoretical value, it was meant to represent the appropriate value to be used with any approved sampler unit operating at 2.0 L/min and equipped with a 10-mm nylon cyclone. No data or analyses were submitted to suggest that this conversion factor, which has been accepted and used for over twenty years, should be any other value.

II. Conforming to the ACGIH and ISO Standard

One commenter implied that the respirable dust cyclone specifications used by MSHA result in a different particle collection efficiency curve than that specified by the American Conference of Governmental Industrial Hygienists (ACGIH) and the International Organization for Standardization (ISO) for a respirable dust sampler. Other previous commenters questioned whether the 2.0 L/min flow rate used by MSHA was appropriate, since a NIOSH study recommended using a 1.7 L/min flow rate when conforming to the recently adopted ACGIH/ISO specifications for collecting respirable particulate mass.

It is true that MSHA's respirable dust cyclone specifications result in a different particle size distribution than that specified by ACGIH and ISO. However, this fact has no bearing on the conversion to a respirable dust concentration as measured by an MRE sampler, which is the basis of the respirable dust standard. The 1.38 factor used to obtain an MRE-equivalent concentration was derived for a cyclone flow rate of 2.0 L/min. If a flow rate of 1.7 L/min were used, then this would correspond to some other factor for converting to an MRE-equivalent dust concentration. Therefore, the particle size distribution obtained at 2.0 L/min governs the relationship derived between an approved respirable coal mine dust sampler and an MRE sampler. The appropriate dust fraction (*i.e.*, the fraction corresponding to the 1.38 conversion factor) is sampled so long as the specified 2.0 L/min flow rate is maintained.

III. Effects of Other Variables

The effects of any other variables on the sampled dust fraction are covered by the 1.38 conversion factor, so long as these effects were present in the data from which the conversion factor was obtained. For example, one commenter expressed concern that nylon cyclones are subject to performance variations due to static charging phenomena. Any systematic effect of static charging on the performance characteristics of the nylon cyclone is implicitly accounted for in the conversion factor, because the same static charging effect would have been present when the comparative measurements were obtained for deriving the relationship between an approved sampler unit and an MRE instrument. Random effects of static charging, *i.e.*, effects that vary from sample to sample, are included in CV_{total}.

Appendix C—Components of CV_{total}

I. Weighing Uncertainty

(a) Derivation of CV_{weight}

The weight of a dust sample is determined by weighing each filter capsule before and after exposure and then determining the weight gain by subtraction. This weight gain is adjusted by subtracting any change in weight observed for the unexposed, control filter capsule. This practice eliminates potential biases due to any possible outgassing of the plastic cassette or other time-related factors but introduces two additional weighings. The weighing process is designed to control potential effects of temperature, humidity, and contamination. However, because the initial and final weighings of both the exposed and the control filter capsules are each still subject to random error, there is some degree of uncertainty in the computed weight of dust collected on the filter.

For both the control and the exposed filter capsule, the error in the weight-gain measurement results from combining two independent weighing errors. For example, suppose that the true pre- and post-exposure weights of a filter capsule are W_1 = 392.275 mg and W_2 = 392.684 mg, respectively. The true weight gain (G) would then be:

$$G = W_2 - W_1 = 0.409 \text{ mg.}$$

If, due to weighing errors, pre- and post-exposure weights were measured at w_1 = 392.282 mg and w_2 = 392.679 mg, respectively, then the measured weight gain (g) would be:

$$g = w_2 - w_1 = 0.397 \text{ mg.}$$

The error (e) in this particular weight-gain measurement, resulting from the combination of a 7 μg error in w_1 and a5 μg error in w_2, would then be:

$$\begin{aligned} e &= g - G \\ &= (w_2 - w_1) - (W_2 - W_1) \\ &= (w_2 - W_2) - (w_1 - W_1) \\ &= -5 - 7 = -12 \ \mu g^{32} \end{aligned}$$

Imprecision in the true weight gain is expressed by Qe, the standard deviation of e. When a weight-gain measurement (g) is converted to an MRE-equivalent concentration (in units of mg/m³) based on a 480-minute sample at 2.0 L/min, both the actual weight gain (G) and the weight-gain error (e) are multiplied by the same factor:

$$\frac{1.38}{480 \text{ min} \cdot \frac{2 \text{ liters}}{\text{min}} \cdot \frac{1 \text{ m}^3}{1000 \text{ liters}}} = \frac{1.438}{\text{m}^3}$$

[32] Prior to mid-1995 there were two additional sources of uncertainty in the weight gain recorded for MSHA inspector samples. First, filter capsules were routinely weighed in different laboratories before and after exposure, without use of blank filters or control filters, thus subjecting them to interlaboratory variability. Second, the pre- and post-exposure weights were both truncated down to the nearest exact multiple of 0.1 mg, below the weight actually measured, prior to recording weight gain and calculating dust concentration.

Therefore, the standard deviation of the propagated weighing error component in a single, full-shift measurement ($x = g \cdot 1.438/m^3$) is $1.438\sigma_e$ mg/m³, assuming no adjustment for weight change in the control filter capsule.

Since a control filter capsule will is used to eliminate potential bias, the weight gain measured for the exposed filter (g) is adjusted by subtracting the change in weight (which may be positive or negative) observed for the control filter capsule (g′). Therefore, the adjusted measurement of dust concentration is

$$x' = (g - g') \cdot 1.438 / m^3.$$

Any change in weight observed for the control filter capsule is subject to the same measurement imprecision due to random weighing errors, represented by σ_e, as the weight gain measurement for an exposed filter. In addition to the weight-gain error for the exposed filter whose measured weight gain is g, x′ will also contain a weight-gain error contributed by the measured change in weight of the control filter capsule (g′). Using a standard propagation-of-errors formula, the imprecision is represented by

$$\sqrt{\sigma_e^2 + \sigma_e^2} = \sqrt{2\sigma_e^2} = \sigma_e \sqrt{2} \cdot$$

Therefore, the standard deviation of the propagated weighing error component in the adjusted measurement is $1.438\sigma_e\sqrt{2}$ mg/m³.

To form an estimate of CV_{weight} when control filter capsules are used, the estimated value of $1.438\sigma_e$ is multiplied by √2 and expressed as a percentage of the true dust concentration being measured (*X*):

$$CV_{weight} = \frac{1.438 \cdot \sigma_e \sqrt{2}}{X} \cdot 100\% \qquad (3)$$

Since σ_e is essentially constant with respect to dust concentration, CV_{weight} decreases as the dust concentration increases.

(b) Values Expressing Uncertainty Due to Random Errors in Weight-Gain Measurements

Table C–1 summarizes 13 different estimated values for σ_e. Six of these values were mentioned during earlier proceedings related to this notice, and two additional values for σ_e are derived in this appendix from data introduced during these earlier proceedings. Three other values for σ_e are derived from data and statistical analyses placed into the record along with the **Federal Register** notices published by MSHA and NIOSH on February 3, 1998 (Parobeck, *et al.,* 1997; Wagner, May 28, 1997). The remaining two values of σ_e are derived in an analysis being placed into the record in connection with the present **Federal Register** notice (Kogut, *et al.,* 1999). The 13 values listed in Table C–1 are not inconsistent, but as explained below, represent estimates of weight-gain imprecision during different historical periods or under different sample processing procedures. Eleven of these values are based on weight gains measured for capsules employing a Tyvek; filter support pad. Two are based on capsules with stainless steel support pads.

TABLE C–1.—STANDARD DEVIATION OF ERROR IN WEIGHT GAIN (σ_e)

Description	Reference	σ_e (µg)
MSHA's historical estimate of upper bound	59 FR 8356; Kogut, September 6, 1994a	97.4
1981 measurement assurance estimate;† older technology, truncation of weights	Parobeck, *et al.,* 1981; Bartley, September 7, 1994.	81
300 unexposed tamper-resistant capsules pre- and post-weighed in different labs;† no truncation.	Kogut, May 12, 1994	29
Inspector samples processed between late 1992 and mid 1995;† capsules pre- and post-weighed in different labs with truncation; estimate adjusted for differences between labs.	Appendix C	51.7
NMA data obtained from samples collected by Skyline Coal, Inc.†	Appendix D	76
Value used in NIOSH ''indirect approach'' based on repeated measurements on same day and in same lab;† derived from Kogut.	61 FR 10012; Kogut, May 12, 1994	5.8
1995 MSHA field study;† capsules pre-weighed, assembled, and post-weighed by MSHA.	Kogut, *et al.,* 1997; Wagner, 1995	9.1
1996 measurement assurance estimate †	61 FR 10012; Tomb, February 16, 1996	6.5
75 unexposed capsules recalled from MSHA field offices †	Wagner, May 28, 1997	8.2
50 replicate weighings of 16 unexposed filter capsules †	Parobeck, *et al.,* 1997	10.3
50 replicate weighings of 16 unexposed filter capsules †	Parobeck, *et al.,* 1997	11.2
2,640 unexposed ''quality control'' capsules pre-weighed by MSHA, assembled by MSA, and subsequently post-weighed by MSHA †.	Kogut, *et al.,* 1999	11.3
300 unexposed capsules pre-weighed by MSHA, assembled by MSA, carried during MSHA inspection, and subsequently post-weighed by MSHA‡.	Kogut, *et al.,* 1999	11.6

† Tyvek support pad.
‡ stainless steel support pad.
MSA Mine Safety Appliances Co.

In MSHA's February 1994 notice, $1.438\sigma_e$ (identified as ''variability associated with the pre- and post-weighing of the filter capsule'') was presented as 0.14 mg/m³, or 7 percent of 2.0 mg/m³, as described in Kogut (September 6, 1994a). It follows that the value of σ_e

implicitly assumed in MSHA's February 1994 notice (obtained by dividing 0.14 by 1.438) was 0.0974 mg (97.4 μg). Seven percent of 2.0 mg/m^3 had been used by MSHA from the inception of its dust enforcement program to represent an upper bound on weighing imprecision in a dust concentration measurement.

After publication of the February 1994 notice, several other candidate values for σ_e were placed into the public record. In 1981, based on data collected to implement a measurement assurance program in MSHA's weighing laboratory, σ_e was estimated using a method developed by the NBS to be 0.0807 mg (80.7 μg) (Parobeck, *et al.,* 1981). The published NBS estimate reflected weighing technology in place at the time the article was published (1981), as well as the practice (no longer in effect for MSHA inspector samples) of truncating both the pre- and post-exposure weights down to an exact multiple of 0.1 mg. This estimate was used to calculate CV_{weight} by Bartley (September, 1994).

Some previous commenters misread or misunderstood the published NBS estimate. One of these previous commenters claimed that ''the only published report of the weighing error in MSHA's laboratory * * * was 0.16 mg of variation, which would convert to a concentration of 0.20 mg/m^3 compared to the 0.14 mg/m^3 * * * MSHA and NIOSH used.'' This is incorrect, since the standard deviation of weight-gain errors (including the effect of truncation) is actually identified as 0.0807 mg in the Appendix to Parobeck, *et al.,* (1981). The 0.16-mg figure quoted by the commenter is presented in that paper as defining a 2-tailed 95-percent confidence limit, for use in establishing process control limits. It is derived by multiplying σ_e by 2.0. As explained above, the published value of σ_e = 0.0807 mg is multiplied by 1.438 m^{-3} to propagate an MRE-equivalent concentration error of 0.116 mg/m^3. Contrary to the commenters' assertion, this is less—not more—than the quantity (0.14 mg/m^3) assumed in the February 1994 notice.

In September 1994, a more recent analysis was placed into the public record, based on repeated weighings of 300 unexposed filter capsules, each of which was weighed once in the Mine Safety Appliances Co. laboratory and twice in MSHA's laboratory using current equipment (Kogut, May 12, 1994). Based on this analysis, σ_e was estimated to be 29 μg for pre- and post-weighings on different days at different laboratories, or 5.8 μg for pre- and post-weighings on the same day within MSHA's laboratory. The 5.8-μg value was used as part of the NIOSH ''indirect approach'' in its 1995 accuracy assessment (Wagner, 1995). Neither of these two estimates, however, reflects the effects of truncation or of a mean difference of about 12 μg discovered between weighings in the two laboratories. Combining these two additional effects with the 29-μg estimate results in an adjusted estimate of σ_e = 51.7 μg for weighings made in different laboratories and truncated to a multiple of 0.1 mg. MSHA and NIOSH regard this 51.7-μg value to be the best available estimate of σ_e for inspector samples processed between late 1992, when the current style of (tamper-resistant) cassette was introduced, and mid-1995, changes in inspector sample processing were implemented.

Some previous commenters suggested that the estimates of σ_e, placed into the record in September 1994, did not adequately account for potential errors in the weighing process as it existed at that time. One of these previous commenters asserted that truncation error was an additional source of uncertainty that had not been accounted for. As explained above, however, σ_e accounts for uncertainty deriving from both the pre- and post-exposure weighings. Both the 80.7-μg NBS estimate and the 97.4-μg value assumed in the February 1994 notice included the effects of truncating weight measurements to 0.1 mg. Truncation effects are also included in the 51.7-μg estimate.

Some previous commenters expressed special concern over the accuracy of pre-exposure filter capsule weights as measured by Mine Safety Appliances Co. One commenter expressed ''grave concern'' with regard to the 12-μg systematic difference in weights found between Mine Safety Appliances Co. and MSHA weighings of the same unexposed capsules, as described in MSHA's 1994 analysis (Kogut, May 12, 1994). These concerns became moot, at least with respect to MSHA's inspector sampling program, when MSHA began pre- and post-weighing all inspector samples at MSHA's laboratory. Furthermore, any potential bias resulting from differences in laboratory conditions on the days of pre- and post-exposure weighings should now be eliminated by the use of control filter capsules. However, contrary to this commenter's interpretation, the analysis submitted to the record in September 1994 resulted in a substantially lower estimate of σ_e than that assumed in the February 1994 notice—even after adjustment for the 12-μg systematic difference observed between weighing laboratories. The 51.7-μg estimate discussed above includes this adjustment.

MSHA and NIOSH also analyzed data submitted by the NMA in connection with these proceedings. An important result of that analysis, described in Appendix D, was an estimate of σ_e equal to 76 μg ± 15 μg.[33] This estimate is not significantly different, statistically, from either the 97.4-μg value assumed in the February 1994 notice, the 80.7-μg NBS estimate, or the 51.7-μg value estimated for samples collected between late 1992 and mid-1995. Since the NMA data were obtained from samples collected by Skyline Coal, Inc. prior to 1995, the Secretaries believe these data confirm the 51.7-μg value of σ_e applicable to the Skyline samples. The estimate of σ_e obtained from the Skyline data is, however, significantly greater than the value estimated for weight-gain measurements under MSHA's current inspection program. This is explained by the fact that when the Skyline samples were collected, all samples were weighed in different laboratories before and after sampling, and the weights were truncated to 0.1 mg. before calculating the weight gain.

Both truncation of weights and the practice of pre- and post-weighing samples in different laboratories were discontinued for inspector samples in mid-1995. Under MSHA's revised procedures for processing inspector samples, filter capsules were weighed both before and after sampling in MSHA's laboratory. Furthermore, MSHA began to use weights recorded to the nearest μg in calculating dust concentrations. Therefore, the 5.8-μg estimate of σ_e described above, applying to pre- and post-exposure weighings in the same laboratory using current equipment and no truncation, was used by NIOSH to calculate CV_{weight} as part of the NIOSH ''indirect'' evaluation of CV_{total}, placed into the public record on March 12, 1996.

Based on the results of MSHA's 1995 field study, σ_e was estimated to be 9.12 μg (Kogut, *et al.,* 1997). The filter capsules involved in this study were used to collect respirable coal mine dust samples in an underground mine between pre- and post-exposure weighings in MSHA's laboratory, potentially subjecting them to unknown sources of variability in weight gain not covered by the laboratory estimates. Substituting the estimated value of σ_e = 9.12 μg into Equation 3 results in a corresponding estimate of CV_{weight} that declines as the sampled dust concentration increases—ranging from 9.3 percent at dust concentrations of 0.2 mg/m^3 to less than one percent at concentrations greater than 2.0 mg/m^3. This estimate of CV_{weight} applies to the procedure utilizing control filter capsules.

An updated estimate of σ_e = 6.5 μg was also calculated using the published NBS procedure for filter capsules processed with the current equipment and procedures for inspector samples. This estimate, derived from weighing the same group of 55 unexposed filter capsules 139 times over a 218-day period, was described in material placed into the public record on March 12, 1996 (Tomb, February 16, 1996). The 6.5 μg estimate applies to filter capsules pre- and post-weighed robotically on different days within MSHA's laboratory, but it does not reflect any potential effects of removing the capsule from the laboratory and exposing it in the field between weighings.

The estimate of imprecision in measured weight gain derived from MSHA's 1995 field study discussed earlier (9.1 μg), falls only slightly above the 6.5-μg laboratory estimate. This suggested that the process of handling and actually exposing the filter capsule in a mine environment does not add appreciably to the imprecision in measured weight gain.

In February 1997, 75 unexposed filter capsules that had been pre-weighed in MSHA's laboratory and distributed to MSHA district offices were recalled and reweighed. After adjusting for variability attributable to the date of initial weighing (*i.e.,* variability that would be eliminated by use of a control filter capsule), these data provided an estimate of σ_e equal to 8.2 μg (Wagner, May 28, 1997). This estimate, based on weighings separated by a span of about four to five months, corroborated the 9.1-μg estimate obtained from MSHA's 1995 field study.

[33] To construct a 90-percent confidence interval for σ_e, based on the Skyline data, the 15-μg ''standard error of the estimate'' must be multiplied by a confidence coefficient of 1.64.

An MSHA report placed into the public record with the December 31, 1997 **Federal Register** notices described results from an experiment in which 32 filter capsules were each weighed on 50 different days, alternating between the MSHA and Mine Safety Appliances Co. laboratories. Sixteen of these capsules employed a Tyvek® filter support pad of the type approved under 30 CFR part 74. The remaining sixteen were of the modified type, in which the Tyvek® support pad was replaced by a stainless steel support pad. The residual variance associated with an individual weight measurement was found to be 53.5 μg^2 for filter capsules employing a Tyvek® support pad and 62.9 μg^2 for capsules employing a stainless steel support pad (Parobeck, *et al.,* 1997, Table 3.) These figures represent the squared residual variability not ''explained'' by repeated handling, elapsed time, changes in laboratory conditions, or other terms of the model used in the report. The other sources of variability reported (*i.e.*, those ''explained'' by the model) are all eliminated by the use of a control filter. Therefore, since measurement of a weight gain requires two measurements of weight, the corresponding estimates of σ_e are $(2 \cdot 53.5)^{1/2} = 10.3$ µg for Tyvek®-supported filters and $(2 \cdot 62.9)^{1/2} = 11.2$ µg for stainless steel.

The final two values for σ_e presented in Table C–1 of this appendix are based on filter capsules pre-weighed in MSHA's laboratory, sent to Mine Safety Appliances Co. for assembly into standard plastic cassettes, and then later weighed a second time in MSHA's laboratory. This is currently the normal practice for filter capsules used by MSHA inspectors. Both of these values, summarized below, are derived in a statistical analysis being placed into the public record along with this notice (Kogut, *et al.,* 1999, Table A–2). In that analysis, ''σ_n'' represents the portion of uncertainty in a weight gain measurement that a control filter correction cannot be expected to eliminate. This includes both weighing imprecision and spurious but unsystematic changes in weight, such as might be due to random contamination. Therefore, in the present context, σ_e can conservatively be identified with σ_n.

In 1998, to maintain quality control for the production of filter capsules used in MSHA's enforcement program, 2,640 unexposed filter capsules were weighed at MSHA's laboratory before and after assembly by Mine Safety Appliances Co. All of these capsules employed a Tyvek® filter support pad. The estimated value for σ_n (here identified with σ_e) associated with these capsules was 11.3 µg.

In 1999, MSHA performed a special Modified Filter Capsule Study (MFCS) in which the Tyvek® filter support pad was replaced by a stainless steel support pad. The purpose of the MFCS was to quantify the impact of such a substitution on the accuracy of respirable coal mine dust measurements. Based on an analysis of weight gains measured for 300 modified filter capsules, σ_n (here identified with σ_e) was estimated to be 11.6 µg. All of these capsules were initially weighed in MSHA's laboratory, assembled into cassettes by Mine Safety Appliances Co., distributed to MSHA inspectors, carried but not exposed during a mine inspection, and then weighed for a second time in MSHA's laboratory. The 11.6 µg value represents the combined effects of weighing imprecision and random contamination during assembly, distribution, and field use. It therefore provides a conservative estimate of σ_e for filter capsules employing stainless steel support pads.

(c) Negative Weight-Gain Measurements

Some previous commenters pointed out that MSHA routinely voids samples when the measured pre-exposure weight of a filter capsule is greater than the measured post-exposure weight. According to these commenters, such occurrences reflect an unacceptable degree of inaccuracy in weight-gain measurements. One commenter asserted that such cases are ''of particular significance when only one sample is relied upon.'' This commenter attributed such occurrences solely to errors in the capsule pre-weight and implied that they should not be expected to occur under MSHA's quality assurance program. It was, therefore, implied that negative weight-gain measurements are not consistent with the degree of uncertainty being attributed to weighing error.

Prior to implementation of the 1995 processing modifications, a significant fraction of samples with less than 0.1 mg of true weight gain (*i.e.,* $G < 0.10$ mg) could be expected to exhibit negative weight gains (*i.e.,* $g \leq -0.1$ mg). Contrary to the commenter's implication, however, negative weight-gain measurements do not arise exclusively from positive pre-exposure weighing errors (*i.e.,* $w_1 > W_1$). They can also arise, with equal likelihood, from negative post-exposure weighing errors (*i.e.,* $w_2 < W_2$).

What is required for a negative weight gain ($w_2 < w_1$) is that $e < -G$. Since the true weight gain (G) is always greater than or equal to zero, this means that a negative weight gain is observed when e is sufficiently negative. Under standard assumptions of normally distributed errors, σ_e fully accounts for the probability of such occurrences. Naturally, this probability becomes smaller as G increases and also as σ_e decreases.

The occasional negative weight-gain measurements that have been observed are consistent with values of σ_e estimated for previous processing procedures. Table C–2 contains the probability of a negative weight-gain measurement for true weight gains (G) ranging from 0.0 mg to 0.08 mg, assuming $\sigma_e = 51.7$ µg and the previous practice of truncation, which has now been discontinued for inspector samples. Since the purpose here is to evaluate the probability of negative weight gains under MSHA's previous processing procedures, it is also assumed that no control filter capsules are used to adjust weight gains.

TABLE C–2.—PROBABILITY OF NEGATIVE WEIGHT-GAIN MEASUREMENT, ASSUMING TRUNCATION AND σ_e = 51.7 µG

True weight gain G = $W_2 - W_1$ (mg)	Estimated probability of negative measurement, %
0.00	12.9
0.01	8.4
0.02	5.1
0.03	2.8
0.04	1.5
0.05	0.7
0.06	0.4
0.07	0.2
0.08	0.1

Note: Tabled probabilities (in percent) were obtained from a simulation of 35,000 weight-gain measurements at each value of G, assuming normally distributed weighing errors and the now discontinued practice of measurement truncation.

One commenter suggested the use of a test based on the frequency of negative weight-gain measurements to check the magnitude of the MSHA/NIOSH estimate of CV_{total}. As proposed by the commenter, the test of CV_{total} would consist of comparing the observed proportion of samples voided due to a negative recorded weight gain to the proportion expected, given CV_{total} equal to the MSHA/NIOSH estimate. If the observed proportion were to exceed the expected proportion, then this would constitute evidence that CV_{total} was being underestimated.

The commenter miscalculated the expected proportion, because he mischaracterized the MSHA/NIOSH estimate of CV_{total} as constant over the continuum of dust concentrations. The MSHA/NIOSH estimate of CV_{total} increases as dust concentrations decrease. This would cause a higher proportion of negative results than what the commenter projected under the MSHA/NIOSH estimate, regardless of what statistical distribution of dust concentrations is assumed. The commenter's projection also neglected to take into account the effects of truncating pre- and post-exposure weights to multiples of 0.1 mg. Although this practice has now been discontinued for MSHA inspector samples, it is a factor in the available historical data.

In principle, if the statistical distribution of true dust concentrations were known, the expected proportion of samples voided for negative weight gain could be recalculated to reflect both a variable CV_{total} and, when applicable, truncation of recorded weights. However, under the commenter's proposal, deriving the expected proportion of negative measurements would involve not only CV_{total}, but also an estimate of the distribution of true dust concentrations. Such an estimate would rely on the tenuous assumption that a mixture of dust concentrations in different environments is closely approximated by a lognormal distribution far into the lower tail—*i.e.*, even at concentrations extremely near zero. Furthermore, valid estimation of the lognormal parameters, applicable to dust concentrations near zero, would be

complicated by measurement errors, especially those resulting in negative or zero values. Depending on the data used, truncation effects could also confound the analysis.

Before truncation was discontinued, negative weight-gain measurements were caused by various combinations of pre- and post-exposure weighing and truncation error. Before MSHA began adjusting weight gains using an unexposed control filter, differences in laboratory conditions on the two weighing days and/or unexplained but real systematic weight losses over time may also have contributed to the observed frequency of negative weight gains. Now that truncation has been removed as a source of error in weight-gain measurements for inspector samples, and control filters are used to correct for systematic changes, the frequency of negative weight gains observed historically is largely irrelevant. Significant negative weight-gain measurements—*i.e.*, those that cannot be explained by normal weighing imprecision—are expected to occur less frequently than in the past.

(d) Comparing Weight Gains Obtained From Paired Samples

Some previous commenters maintained that ''although there may be slight differences between how the samples are dried * * *'' differences between the weight gain observed in MSHA samples and simultaneous samples collected nearby (and processed at an independent laboratory) indicated a greater degree of weighing uncertainty than what was being assumed. In response to the Secretaries' request for any available data supporting this position, results from paired dust samples were provided by two coal companies.

In comparing measurements obtained from paired samples, there are several important considerations that some previous commenters did not take into account. First, if two different sampler units are exposed to identical atmospheres for the same period of time, the difference between weight-gain measurements g_1 and g_2 arises, in part, from two independent weight-gain measurement errors, e_1 and e_2. If uncertainty due to each of these errors is represented by σ_e, then the difference between g_1 and g_2 has uncertainty due to weighing error equal to $\sigma_e\sqrt{2}$. Consequently, weight gains measured in the same laboratory, on the same day, for different filter capsules exposed to identical atmospheres can be expected to differ by an amount whose standard deviation is $1.41\sigma_e$.

Furthermore, if the two exposed capsules are processed at different laboratories, the difference in weight gains contains an additional error term arising from differences between laboratories. Evidence was presented that this term (in the notation of Kogut, May 12, 1994) is far more significant than the intra-lab, intra-day weighing error in MSHA's laboratory. Moreover, the additional uncertainty introduced by use of a third laboratory also depends on unknown weighing imprecision within that laboratory, which may differ from that maintained by MSHA's measurement assurance process. (See Appendix D for analysis of paired sample data submitted by NMA).

However, the most important consideration in comparing weight gains from two different samples is that under real mining conditions, the atmospheres sampled may not be identical—even if the sampler units are located near one another. Differences in atmospheric dust concentrations over relatively small distances have been documented (Kissell, *et al.*, 1993). Such differences would be expected to produce corresponding differences in weight gain that are unrelated to the accuracy of a single, full-shift measurement as defined by the measurement objective explained earlier in this notice.

II. Pump Variability

The component of uncertainty due to variability in the pump, represented by CV_{pump}, consists of potential errors associated with calibration of the pump rotameter, variation in flow rate during sampling, and (for those pumps with rotameters) variability in the initial adjustment of flow rate when sampling is begun. The Secretaries believe that CV_{pump} adequately accounts for all uncertainty identified by previous commenters as being associated with the volume of air sampled.

In deriving the Values Table published in MSHA's February 1994 notice, MSHA used a value of 5 percent to represent uncertainty associated with initial adjustment of flow rate at the beginning of the shift and another value of 5 percent to represent flow rate variability. The 5-percent value for variability in initial flow rate adjustment was estimated from a laboratory experiment conducted by MSHA in the early 1970s, while the value for flow rate variability was based on the allowable flow rate tolerance specified in 30 CFR part 74. This part requires that the flow rate of all sampling systems not vary by more than ±5 percent over a full shift with no more than two adjustments. MSHA did not include a separate component of variability for pump rotameter calibration because it was already included in the 5-percent value used to represent flow rate variability.

Based on a review of published results by Bowman *et al.* (1984), the Secretaries concluded that the component of uncertainty associated with the combined effects of variability in flow rate during sampling and potential errors in calibration is less than 3 percent. Therefore, as proposed in the March 12, 1996 notice, the Secretaries are now estimating uncertainty due to variability in flow rate to be 3 percent.

Because MSHA could not provide the experimental data supporting the 5-percent value used to represent uncertainty associated with the initial adjustment of flow rate, one commenter recommended that MSHA conduct a new experiment. In response to that request, MSHA conducted a study to establish the variability associated with the initial flow rate adjustment. The study, placed into the public record on September 9, 1994, attempted to emulate realistic operating conditions by including a variety of sampling personnel making adjustments under various conditions. Results showed the coefficient of variation associated with the initial adjustment to be 3 ± 0.5 percent (Tomb, September 1, 1994). The Secretaries consider this study to provide the best available estimate for uncertainty associated with the initial adjustment of a sampler unit's flow rate. Therefore, as proposed in the March 12, 1996 notice, the Secretaries are now estimating uncertainty due to variability in the initial adjustment to be 3 percent.

One previous commenter expressed concern regarding how representative MSHA's study on initial flow rate adjustment was of actual sampling conditions. The Secretaries consider the conditions under which the study was conducted to have adequately mimicked conditions under which the flow rate of a coal mine dust sampling system is adjusted. This was more rigorous than the original study, from which MSHA estimated the 5-percent value assumed in the February 12, 1994 notice. The tests were conducted in an underground mine, using both experienced and inexperienced persons to make the adjustments. Also, the only illumination was supplied by cap lamps worn by the person making the adjustments. Tests were conducted for adjustments made in three different physical positions: standing, kneeling and prone. Inspection personnel participating in the study provided guidance as to the methods typically used by inspection personnel in adjusting pumps. In fact, environmental conditions under which the test was conducted were generally more severe than those normally encountered by inspection personnel, since initial adjustment of the pumps normally occurs on the surface just before the work shift begins.

The same commenter also questioned why only the variability associated with initial adjustment of the flow rate was estimated and not the variability associated with subsequent adjustments during the shift. This is because the variability associated with the subsequent flow rate adjustments of an approved sampler unit is already included in the 3-percent value estimated for variability in flow rate over the duration of the shift.

Since variability in the initial flow rate adjustment is independent of calibration of the pump rotameter and variability in flow rate during sampling, these two sources of uncertainty can be combined through the standard propagation of errors formula:

$$CV_{pump} = \sqrt{(3\%)^2 + (3\%)^2} = 4.2\%$$

This estimate accords well with a more recent finding based on 186 measurements in an underground mine, using constant flow-control pumps (Kogut *et al.,* 1997). That study estimated CV_{pump} = 4.0 percent and concluded that CV_{pump} was unlikely to exceed 4.4 percent.

Three previous commenters stated that there are reports of sampling pumps being calibrated and used at altitudes differing by as much as 3,000 feet and that, for many pumps, this could result in more than a 3-percent change in flow rate per 1,000 feet of altitude. MSHA recognized this as a potential problem as early as 1975. As a result, MSHA conducted a study to ascertain the effect of altitude on coal mine dust sampler calibration (Treaftis, *et al.,* 1976). The study showed that both pump performance and rotameter calibration were affected by changes in altitude but that an approved Mine Safety Appliances Co. sampling system, calibrated and adjusted at an altitude of 800 feet to a flow rate of 2.0 L/min, would meet the requirement of 30 CFR 74.3(11) when sampling at an altitude of 10,000 feet, even if no adjustment were made to the pump. The study also provided equations for adjusting the calibration mark on the pump rotameter so that, when sampling at an altitude different from the one at which the rotameter was calibrated, the appropriate flow rate would be obtained. These procedures are used by MSHA inspectors in instances where the sampling altitude is significantly different from the altitude where the sampling system is calibrated.

Some previous commenters questioned the ability of the older Mine Safety Appliances Co. Model G pumps to meet the same flow rate specifications as new pumps. MSHA has discontinued the use of these older pumps in its sampling program and will be using only flow-control pumps. More recent MSHA studies show that these pumps continue to meet the flow rate requirement of 30 CFR 74.3(11) at altitudes up to 10,000 feet (Gero, *et al.,* 1995). As a result, the flow-control pumps currently used by inspectors can be calibrated at one altitude and used at another altitude with no additional adjustments made to the pumps. Furthermore, all sampler units used to measure respirable dust concentrations in coal mine environments are required to be approved in accordance with the regulatory requirements of 30 CFR part 74, which require flow rate consistency to be within ± 0.1 L/min of the 2.0 L/min flow rate.[34] MSHA's experience over the past 20 years has demonstrated that flow rate consistency of older sampling systems will continue to meet the requirements specified in part 74, provided the systems are regularly calibrated and maintained in approved condi tion. To ensure that sampling systems continue to meet the specification of part 74, MSHA's policy requires calibration and maintenance by specially trained personnel in accordance with MSHA Informational Report No. 1121 (revised).

[34] Section 74.3(13) requires that flow rate in an approved sampler unit deviate from 2.0 L/min by no more than 5 percent over an 8-hour period, with no more than 2 readjustments after the initial setting. However, this is a maximum deviation, and the uncertainty associated with pump flow rate, as quantified by its coefficient of variation, is 3 percent.

III. Intersampler Variability

Intersampler variability, represented by $CV_{sampler}$, accounts for uncertainty due to physical variations from sampler to sampler. Most of the previous commenters ignored this source of uncertainty. One commenter, however, stated that 10-mm nylon cyclones are subject to performance variations due to static charging phenomena (discussed in Appendix B).

Intersampler variability was investigated by Bowman, *et al.,* (1984), Bartley, *et al.* (1994), and Kogut, *et al.* (1997). Bowman, *et al.* designed a precision experiment to determine the contribution to CV_{total} from differences between individual coal mine dust sampler units. Based on their experiment, they reported $CV_{sampler}$ = 1.6 percent, which included variation in both the 10-mm nylon cyclone and the Mine Safety Appliances Co. Model G pump. They concluded that this low degree of component variability indicates there is excellent uniformity in the mechanical components of dust sampler units. Bartley, from his experimental investigation of eight 10-mm nylon cyclones, estimated $CV_{sampler}$ to be no more than 5 percent for aerosols with a size distribution typical of those found in coal mine environments. Based on an analysis involving 32 different sampler units, Kogut, J., *et al.,* (1997) found that $CV_{sampler}$ was unlikely to exceed 3.1 percent. Unlike Bartley's study, however, this analysis relied on new cyclones, which might be expected to exhibit less variability than older, heavily used cyclones. Therefore, NIOSH used the more conservative estimate of 5 percent, with an upper 95-percent confidence limit of 9 percent, in its ''indirect approach'' for estimating CV_{total} and evaluating method accuracy (Wagner, 1995).

Appendix D—Data Submitted by Previous Commenters

During the public hearings, several previous commenters indicated they had data showing that MSHA and NIOSH had underestimated the overall magnitude of uncertainty associated with a single, full-shift measurement. These data and accompanying analyses were submitted to the record and evaluated by MSHA and NIOSH. Some of the data sets consisted of paired samples, where two approved sampler units were placed nearby one another and operated for a full shift. One of the resulting samples was analyzed in MSHA's laboratory and the other by an independent laboratory. These data were represented as showing that single, full-shift measurements cannot be used to accurately estimate dust concentrations. Other data sets submitted consisted of unpaired measurements collected from miners at intervals over varying spans of time. These data sets were represented as showing that exposures vary widely between shifts and between occupations.

I. Paired Sample Data Submitted by the NMA

The American Mining Congress and National Coal Association [AMC and NCA have since merged into the National Mining Association, (NMA)] submitted at the request of MSHA and NIOSH a data set consisting of 381 pairs of exposure measurements. These measurements had been obtained from the ''designated occupations'' on two longwall and six continuous mining sections belonging to Skyline Coal, Inc. Two sampling units were placed on each participating miner and operated for the full shift. After sampling, one sample cassette was sent to MSHA for analysis while the other was analyzed at a private laboratory. All samples were reported to be ''portal to portal'' samples as required by MSHA regulations. Using these data, the NMA estimated an overall CV of 16 percent. Based on this 16-percent estimate, the NMA suggested that MSHA had underestimated measurement uncertainty in its February 1994 notice by 60 percent at dust concentrations of 2.0 mg/m^3.

The NMA estimate of 16 percent for overall CV includes not only sampling and analytical error, but also variability arising from two additional sources: (1) Spatial variability between the locations where the two samples were collected; and (2) interlaboratory variability introduced by the fact that a third laboratory was involved in weighing exposed filter capsules.

Since the two dust samples within each pair submitted were not collected at precisely the same location, differences observed between paired samples in the Skyline data are partly due to spatial variability. The Secretaries fully recognize and acknowledge that, as suggested by the Skyline data, spatial variability in mine dust concentrations can exist, even within a relatively small area such as the so-called breathing zone of a miner. Consistent with general industrial hygiene practice, however, the Secretaries do not consider such variability relevant to the accuracy of an individual dust concentration measurement.

The NMA expressed sampling and analytical error as a single percentage relative to the average of all dust concentrations that happened to be observed in the data analyzed. Contrary to the NMA analysis, sampling and analytical error cannot be expressed as a constant percentage of the true dust concentration. Because σ_e is constant with respect to dust concentration, CV_{weight} declines with increasing dust concentration, as explained in Appendix C. The value of CV_{total} assumed by MSHA and NIOSH for the period when the Skyline samples were collected (*i.e.,* prior to 1995) is approximately 7.5 percent when the true dust concentration (μ) is 2.0 mg/m^3 and approximately 16.2 percent when μ=0.5 mg/m^3. This is based on applying Equations 2 and 3 to σ_e=51.7 μg, CV_{pump}=4.2 percent, and $CV_{sampler}$=5 percent.

Even if the effects of spatial variability and the third laboratory are ignored, and the overall CV is interpreted as an average over the range of concentrations encountered, the 16-percent value reported by the NMA makes no allowance for the paired covariance structure of the data. Therefore, MSHA and NIOSH consider the 16-percent value to be erroneous, even under NMA's assumptions.

MSHA and NIOSH re-analyzed the Skyline data in order to check whether these data were consistent with the value of σ_e (*i.e.,* 51.7

μg) estimated for the time when the Skyline samples were collected. To distinguish the NMA interpretation of sampling and analytical error (including spatial variability) from the Secretaries' interpretation (excluding spatial variability), SAE will denote sampling and analytical error according to the Secretaries' interpretation, and SAE* will denote sampling and analytical error according to the NMA interpretation. If $CV_{spatial}$ denotes the component of SAE* attributable to spatial variability for each measurement, it follows that

$$SAE^* = \left(CV_{total}^2 + CV_{spatial}^2\right)^{1/2}.$$

To estimate SAE* as a function of dust concentration from the data provided, a least-squares regression analysis was performed on the square of the difference between natural logarithms of dust concentrations x_1 and x_2 observed within each pair. Let μ^* denote the true mean dust concentration, not only over the full shift sampled, but also over the two locations sampled. The expected value ($E\{\cdot\}$) of each squared difference forms the ordinate of the regression line at each value of the abscissa $(1/\mu^*)^2$:

$$\begin{aligned} E\left\{\left(Ln(X_1) - Ln(X_2)\right)^2\right\} &\approx 2\left(SAE^*\right)^2 \\ &= 2\left(CV_{total}^2 + CV_{spatial}^2\right) \\ &= 2\left[CV_{pump}^2 + CV_{sampler}^2 + CV_{weight}^2 + CV_{spatial}^2\right] \\ &= 2\left(CV_{pump}^2 + CV_{sampler}^2 + CV_{spatial}^2\right) + 2\left(1.438\sigma_e / \mu^*\right)^2 \\ &= a_0 + a_1\left(1/\mu^*\right)^2 \end{aligned}$$

Since no control filter capsules were used in processing the Skyline dust samples, CV_{weight} does not, in this analysis, contain the $\sqrt{2}$ factor shown in Equation 3 of Appendix C. The intercept of the regression line is: $a_0=2(CV^2_{pump}+CV^2_{sampler}+CV^2_{spatial})$, and the slope is $a_1=2(1.438\sigma_e)^2$. To carry out the regression analysis, μ^* was approximated by $(x_1+x_2)/2$. Regression estimates of the parameters a_0 and a_1 were used to generate corresponding estimates of $_e$ and $CV^2_{spatial}$.

The least squares estimate of σ_e obtained from this analysis is 76.0 μg, with standard error of ±15 μg. This is not significantly different, statistically, from the 51.7-μg value estimated for the time period when the Skyline samples were collected. Assuming CV_{pump} = 4.2 percent and $CV_{sampler}$ = 5 percent, the value of $CV_{spatial}$ obtained from the least squares estimate of a_0 is 19.7 percent, with standard error of ± 2.9 percent.

II. Paired Sample Data Submitted by Mountain Coal Company

Mountain Coal Company submitted a data set consisting of the difference (expressed in mg/m³) between paired samples collected from miners over roughly a one-year period. Two sampler units were placed on each participating miner (presumably one on each collar or shoulder) and operated for roughly a full shift. One sample cassette was sent to MSHA for analysis (post-weighing) while the other was analyzed at a private laboratory.

Mountain Coal Company provided only the differences between measurements within each pair and not the concentration measurements themselves. Since CV_{total} varies with dust concentration, and the dust concentrations were not provided, it was impossible to form a valid estimate of measurement variability from these data, or to determine what part of the observed differences could be attributed to weighing error and what part to spatial variability or variability attributable to operation of the pump and physical differences between sampler units.

III. Exposure Data Submitted by Jim Walter Resources, Inc.

Jim Walter Resources, Inc. submitted a data set consisting of exposure measurements collected from all miners working on two longwall sections. Measurements were collected from each miner on five consecutive days. This procedure was repeated during five sampling cycles over a two-year period. During each sample cycle the five measurements for each miner were averaged and compared to the respirable dust standard. According to Jim Walter Resources, Inc., the sampling plan ''eliminates the effect of the variability of the environment and minimizes the error due to the coefficient of variation of the pump because *all miners* [original emphasis] are sampled for five shifts,'' and these data ''show the variability of the sample pump and of the worker's exposure to respirable dust.''

In its submission, Jim Walter Resources, Inc. apparently assumed that the quantity being measured is average dust concentration across a number of shifts, rather than dust concentration averaged over a single shift at the sampling location. The Secretaries agree that dust concentrations do vary from shift to shift and from job to job, as these data illustrate. This variability, however, is largely under the control of the mine operator and should not be considered when evaluating the accuracy of a single, full-shift measurement.

IV. Exposure Data Submitted by the NMA

The NMA submitted data consisting of recently collected and historical measurements collected from the designated occupations (continuous miner operator for continuous mining sections and either the headgate or tailgate shearer operator for longwall mining sections) for three continuous mining sections and five longwall mining sections. According to the NMA analysis, there is a 17-percent probability that these mines would be cited, even though the long-term average is less than the respirable dust standard.

The NMA failed to recognize that the quantity being measured is dust concentration averaged over a single shift at the sampling location. The Secretaries agree that exposures do vary from shift to shift, as these data illustrate. This variability, however, is largely under the control of the mine operator and should not be considered when evaluating the accuracy of a single, full-shift measurement.

V. Sequential Exposure Data Submitted by Jim Walter Resources, Inc.

Jim Walter Resources, Inc. submitted data collected from several longwall faces. For each longwall, seven dust samples were collected, using sampler units placed on the longwall face at least 48″ from the tailgate at the MSHA 061 designated location. Pumps were successively turned off in one hour increments, resulting in samples covering progressively longer time periods over the course of the shift, from one to eight hours. This was repeated on a number of days at each longwall.

Many of the samples showed either the same or less weight gain than the previous sample (collected over a shorter time period) within a sequence. In the cover letter and written comments accompanying these data, it was claimed that the weight gains observed for samples within each sequence should progressively increase, irrespective of variations in air flow and production levels, and that the patterns observed exemplify

''the variability of sample results with today's equipment and weighing techniques.''

MSHA and NIOSH have concluded that these data cannot be used to estimate or otherwise evaluate measurement accuracy for the following reasons: First, a highly sensitive and accurate sampling device would be expected to produce variable results when exposed to even slightly different environments. Since the samples within each sequence of seven were not collected at exactly the same point, they are subject to spatial variability in dust concentration. It is well known that dust concentrations can vary even within small areas along a longwall face. Therefore, variability in sample results is attributable not only to measurement errors but also to variations in dust concentration due to spatial variability.

Second, even on a production shift, variations in air flow and production levels over the course of the shift can result in periods within the shift during which the true dust concentration to which a sampler is exposed is low or near zero. If a sampler unit is exposed to a relatively low dust concentration during the final hour in which it is exposed, any difference between that sample and the previous sample will tend to be dominated by spatial variability. In such cases the increase in weight accumulated during the final hour would be statistically insignificant as compared to variability in dust concentration at different locations. Without detailed knowledge of the airflow and production levels as they varied over each shift, it is impossible to determine how many cases of this type would be expected. However, approximately one-half of such samples would be expected to exhibit less weight gain than the previous sample.

Further, because sample weights were truncated to 0.1 mg at the time these data were collected, and because expected weight gains of less than 0.1 mg are not uncommon over a one-hour period, there would be no apparent increase in recorded weight gain in many cases where the two sample results actually differed by a positive amount. Therefore, some unknown number of cases showing no difference in successive weight gains are attributable to truncation effects. Truncation has now been discontinued for samples collected under MSHA's inspection program.

Finally, as has been shown in Appendix C, a certain percentage of negative weight-gain measurements at low dust concentrations is consistent with the weighing imprecision experienced at the time these samples were collected. However, since these data were not collected in a controlled environment, it is impossible to determine what that percentage should be. Because the weight gain for each sample is determined as the difference between two weighings, comparison of weight gains between two samples involves a total of four independent weighing errors. Therefore, variability attributable purely to weighing error in the difference between weight gains in two successive samples is greater (by a factor equal to ''2) than variability due to weighing error in a single sample. Furthermore samples collected over less than a full shift are subject to more variability due to random fluctuations in pump air flow and cyclone performance than samples collected over a full shift. Both of these considerations increase the likelihood that a sample will exhibit less weight gain than its predecessor, as compared to the likelihood of recording a negative weight gain for a single, full-shift sample.

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XVI. Regulatory Text

List of Subjects in 30 CFR Part 72

Coal, Health standards, Mine safety and health, Underground mines, Miscellaneous.

Dated: May 31, 2000.

Alexis M. Herman,

Secretary, Department of Labor.

Dated: May 31, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

Accordingly, it is proposed by the Department of Labor, Mine Safety and Health Administration, to amend chapter I of title 30 of the Code of Federal Regulations as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, 961.

2. Section 72. 500 is added to subpart E of part 72 to read as follows:

§ 72.500 Single, full-shift measurement of respirable coal mine dust.

The Secretary may use a single, full-shift measurement of respirable coal mine dust to determine average concentration on a shift if that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift.

[FR Doc. 00–14075 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75 and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of hearings.

SUMMARY: MSHA is proposing to revoke existing operator respirable dust sampling procedures under parts 70 and 90, and to implement new regulations that would require each underground coal mine operator to have a verified mine ventilation plan. Under this proposal, MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit (MMU) in controlling respirable dust under typical mining conditions. MSHA would collect full-shift respirable dust samples, called ''verification samples,'' to demonstrate the adequacy of the dust control parameters specified in the mine ventilation plan in maintaining the concentration of respirable coal mine and quartz dust at or below 2.0 mg/m^3 and 100 μg/m^3, respectively. The adequacy of these parameters would be demonstrated on shifts during which the amount of the material produced is at or above the ''verification production level'' (VPL) or the tenth highest production level recorded in the most recent 30 production shifts.

The proposal would require mine operators to: First, set and maintain the dust control parameters during MSHA verification sampling at levels specified in the plan; second, maintain and make available to MSHA records of the amount of material produced by each mechanized mining unit during each production shift; and third, additional information in mine ventilation plans. For longwall mine operations, MSHA is also proposing to permit the use of either approved powered, air-purifying respirators (PAPRs) or verifiable administrative controls as a supplemental means of compliance if MSHA has determined that further reduction in respirable dust levels cannot be achieved using all feasible engineering or environmental controls appropriate for the operational conditions involved. In addition, through this rule, MSHA would conduct all compliance and abatement sampling under existing parts 70 and 90.

DATES: Comments on the proposed rule should be submitted on or before August 7, 2000.

We are also announcing that we will hold public hearings on the proposed rule within 30 to 45 days of the publication of this rule. The hearing dates, times and specific locations will be announced by a separate document in the **Federal Register**. The rulemaking record will remain open 7 days after the last public hearing.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send your comments to MSHA. Clearly identify comments as such and send them—(1) By mail to: Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to: comments@msha.gov. Written comments on the information collection requirements may be submitted directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for MSHA; and to Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; by facsimile to MSHA, at 703–235–5551; or by electronic mail to comments@msha.gov.

The hearings will be held in the following locations: Prestonsburg, Kentucky, (Jenny Wiley State Resort Park); Morgantown, West Virginia; and Salt Lake City, Utah. The hearing dates, times and specific locations will be announced by a separate document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The preamble discusses: revocation of existing operator respirable dust sampling requirements, revised procedures for adjusting the respirable dust standard when quartz is present, the proposed rule, engineering controls for respirable coal mine dust, dust control parameters, supplemental controls, health effects of exposure to respirable coal mine dust, degree and significance of the reduction in the number of shifts during which there are overexposures, an analysis of the technological and economical feasibility of this proposed rule, and regulatory impact and flexibility analyses.

The preamble discussion follows this outline:

I. Table of Contents
II. Background
A. Coal Mine Respirable Dust Task Group
B. Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers
III. General Discussion
A. Revocation of the Operator Dust Sampling Program
1. Pre-1980 Sampling Program
2. Post-1980 Sampling Program
3. Issues Affecting the Credibility of Operator Compliance Sampling
4. Proposed Reforms to the Respirable Dust Monitoring Program
a. Bimonthly Sampling
b. Abatement Sampling
c. Advantages of MSHA Compliance Sampling Over Existing Program
B. Revised Procedures for Setting the Applicable Dust Standard When Quartz is Present
1. Current Procedures
2. Proposed Revised Procedures
3. Validity of Averaging Percentages
C. Respirable Dust Control Program for Underground Coal Mines
1. Evaluating and Approving Plan Requirements for Respirable Dust Control
2. Compliance with Plan Requirements for Respirable Dust Control
3. Monitoring Effectiveness of Plan Requirements for Respirable Dust Control
(a) Monitoring by Mine Operators
(b) Monitoring by MSHA
4. Proposed Procedures for Evaluating, Approving, and Monitoring Plan Requirements
D. Hierarchy of Dust Controls
1. Selection of Respirators: Loose-Fitting PAPRs
2. Protection Factor for Loose-fitting Powered, Air-Purifying Respirators
E. Guidelines for Determining What is a Feasible Dust Control
F. Application of Continuous Monitoring Technology to Prevent Overexposure on Individual Shifts
IV. Discussion of Proposed Rule
A. Summary
B. Section-by-Section Discussion
V. Health Effects
A. Introduction
B. Hazard Identification
1. Agent: Coal
2. Physical State: Coal Mine Dust
3. Biological Action: Respirable Coal Mine Dust
C. Health Effects of Respirable Coal Mine Dust
1. Description of Major Health Effects
a. Simple Coal Workers' Pneumoconiosis (CWP) and Progressive Massive Fibrosis (PMF)
b. Other Health Effects
2. Toxicological Literature
3. Epidemiological Literature
a. Simple Coal Workers' Pneumoconiosis (CWP) and Progressive Massive Fibrosis (PMF)
b. Other Health Effects
VI. Quantitative Risk Assessment
VII. Significance of Risk
VIII. Feasibility Issues
A. Technological Feasibility
B. Economic Feasibility
IX. Regulatory Impact Analysis
A. Costs and Benefits: Executive Order 12866
1. Compliance Costs
2. Benefits
B. Regulatory Flexibility Certification and Initial Regulatory Flexibility Analysis
X. Other Statutory Requirements
A. Plain Language
B. Unfunded Mandates Reform Act of 1995
C. Paperwork Reduction Act of 1995
D. National Environmental Protection Act
E. Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)
F. Executive Order 12988 (Civil Justice)
G. Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks)
H. Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments)
I. Executive Order 13132 (Federalism)
XI. Public Hearings
Appendix A. Derivation of the Critical Values
Appendix B. References
XII. Regulatory Text

II. Background

Maintaining a work environment free of excessive levels of respirable coal mine dust and quartz dust (respirable dust) is essential for long-term health protection. Through the joint promulgation of the single, full-shift sample and plan verification proposals, miners would be further protected from the debilitating effects of occupational

respiratory disease by limiting their exposures to respirable coal mine dust to no more than the applicable standard on each shift.[1]

Section 202(b)(2) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires each operator to continuously maintain the average concentration of respirable dust in the mine atmosphere, during each shift to which each miner in the active workings of such mine is exposed, at or below 2.0 milligrams of respirable dust per cubic meter of air (mg/m^3). Under current MSHA regulations, when coal mine dust contains more than five percent quartz, the respirable coal mine dust standard is further reduced, by means of a formula. Although MSHA does not currently enforce a separate standard for respirable quartz dust, the formula (10 divided by the percentage quartz) used to establish an applicable dust standard, in effect, limits quartz concentrations to 100 μg/m^3.

Consistent with the Mine Act and MSHA regulations, the primary focus of the federal respirable dust program is on controlling the concentrations of respirable dust in the work environment where miners work or travel through the application of feasible environmental or engineering control measures. Engineering or environmental control of respirable dust in the mine environment is the ultimate dust-control technique and the principal method for protecting miners' health. These include all methods that control respirable dust levels in the air that a miner breathes by either reducing dust generation, or by suppressing, diluting, capturing or diverting the dust that is being generated by the mining process. Under the Mine Act, the mine operator has primary responsibility for implementing a program to control respirable dust so that all miners work in an environment free of excessive levels of respirable dust. For full compliance, mine operators must develop, implement, and maintain effective engineering or environmental control measures, and evaluate them at regular intervals to assure that they function as intended. These control measures or ''dust control parameters,'' are specified in the dust control portion of the operator's mine ventilation plan currently required under § 75.370.

Mine ventilation plans are a long-recognized means of addressing health issues that are mine specific and for achieving work environments that are free of excessive concentrations of respirable dust. Currently, section 75.370 requires each operator of an underground coal mine to develop and follow a ventilation plan that is designed to control methane and respirable dust in the mine. The plan must be suitable to the conditions and mining systems employed at the mine. Although ventilation plans must be designed to control respirable dust, there is no requirement that the plan's effectiveness be verified.

The dust control portion of the mine ventilation plan is a key element of the operator's strategy to control respirable dust in the working environment of each mechanized mining unit (MMU) during each shift. Section 70.2 defines an MMU to mean ''a unit of mining equipment including hand loading equipment used for the production of material.'' The plans provide a description of specific engineering control measures in use. The plans also contain procedures for maintenance of specific dust control equipment, such as scrubbers, dust collectors on roof bolters, and spray nozzles, or for the replacement of cutting picks to minimize dust generation. Once approved by the District Manager, the dust control parameters must be employed on a continuous basis. By monitoring the parameters, one can be assured that respirable dust levels are being adequately controlled without needing to rely on repeated dust sample analyses.

Implementing dust control parameters, which have been determined effective under typical mining conditions, and maintaining these controls in proper working order provides reasonable assurance that no miner will be overexposed. Because technology that continuously monitors respirable dust and displays dust concentrations in real-time is not currently used in underground coal mines, adhering to effective ventilation plans is the only practical means of reasonably assuring, on a continuous basis, that miners are not overexposed. In 1996, MSHA implemented revised ventilation standards which, among other provisions, required an on-shift examination of the dust control parameters before coal production begins on each MMU. Based on the recommendations of the MSHA Task Group (MSHA, 1992), this requirement is intended to focus attention on the need for properly functioning dust controls before production begins. On-shift examinations of dust control parameters under existing § 75.362 are important for an effective respirable dust control strategy.

Recent advances in technology may make it feasible to continuously monitor certain parameters such as, air quantity and velocity, and spray water flow rate and pressure (Spencer, *et al.* 1996). Section 75.362 encourages the use of such monitors as it would eliminate the need for periodic physical measurements of some dust controls to verify if they are operating properly. Although current technology allows for real-time data on the performance, the condition of key dust control parameters, and for immediate modification of controls, MSHA is not aware of its use by any operator.

Since establishment of the first comprehensive dust standards in 1969, the implementation of ventilation plans by mine operators and their enforcement by MSHA has had a significant impact on control of dust levels in underground coal mines. For example, based on federal mine inspector sampling results, the average dust concentration in the environment of a continuous miner operator (occupation code—036) has been reduced by 86 percent over the past 30 years, from 7.7 mg/m^3 to approximately 1.1 mg/m^3. This accounts for the significant decline in the percentage of operator continuous miner designated occupation (DO) samples exceeding 2.0 mg/m^3, from 49 percent (over 32,000 samples/shifts) in 1971, to 10 percent (over 2,500 samples/shifts) in 1999. Analysis of all valid operator DO samples indicates that in 1971, the 2.0 mg/m^3-dust standard was exceeded on 53,463 (44 percent) of the 122,404 shifts sampled, compared to 3,002 (10 percent) of the 28,727 shifts sampled in 1999 (MSHA, DO Samples by Calendar Year, 1999). Despite this progress, MSHA has found evidence that a significant number of overexposures still occur on the shifts sampled during which the approved dust control parameters are operating at or above approved levels. This evidence suggests that it is highly probable that some miners are overexposed to respirable dust on shifts not sampled by either the operator or by MSHA. In addition, recent medical surveillance data suggests that miners continue to be at risk of developing simple coal workers' pneumoconiosis (CWP), progressive massive fibrosis (PMF) and silicosis (Elam, April 1999).

Certain aspects of the current respirable dust program limit MSHA's ability to assure the adequacy of the dust control parameters under typical mining conditions according to two expert panels which reviewed the federal program designed to prevent pneumoconiosis among coal miners. Both the *Coal Mine Respirable Dust Task Group,* an interagency task group

[1] For details, see Quantitative Risk Assessment and Significance of Risk Sections.

established in 1991 by the Assistant Secretary for Mine Safety and Health, and the *Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers,* established in 1995 by the Secretary of Labor, considered all aspects of the respirable coal mine dust control program and made recommendations for improvement.

A. Coal Mine Respirable Dust Task Group

In response to concerns about the Federal coal mine dust program (MSHA, 1992), MSHA's *Coal Mine Respirable Dust Task Group* (the Task Group) undertook an extensive review of the program to control respirable coal mine dust and made recommendations to improve the program in 1991. As part of that review, MSHA developed a special respirable dust ''spot inspection program'' (SIP). This program was designed to provide the Agency and the Task Group with information on the dust levels to which underground miners are typically exposed. Among other recommendations, the Task Group recommended that MSHA require mine ventilation plans to be effective under typical mining conditions.

The Task Group found that MSHA's current program did not promote the development and implementation of quality plans. Based on its review of a representative number of dust control plans, the Task Group found that some plans lacked specificity or did not include all the dust control parameters actually used. For example, the plans for three major underground coal mines listed the air quantity, the primary means of controlling concentrations of respirable coal mine dust, to be 18,000 cubic feet per minute (cfm) in the mining section. The actual quantities measured by MSHA inspectors at these mines during the SIP varied from 40,000 cfm to over 120,000 cfm.

Based on a review of MSHA Form 2000–86 (Revised), *Respirable Dust Sampling and Monitoring Data,* similar differences were found between air quantity specified in approved ventilation plans and the levels observed at a number of longwall MMUs inspected in 1999. For example, 20 of the 47 longwall MMUs were using significantly more air than specified in the ventilation plan (MSHA, September 1999). Under these circumstances, it would be impossible to assess whether the air volume specified in the plan was adequate to maintain dust concentrations at or below the applicable dust standard. It should be noted that air volume quantities, air velocities, water spray pressures, etc., specified in the plan are considered to be a minimum and MSHA encourages mine operators to exceed their plan parameters, but only after the levels specified in the plan have been shown to be effective under the conditions in effect during sampling. In addition, a lack of specificity in some plans made it difficult for MSHA inspectors to determine whether the operator was complying with the approved plan. Although several plans indicated that the mining equipment was to be provided with water sprays, the plan did not specify the location of the sprays or the water pressure at the spray nozzle.

The Task Group determined that the use of minimum production levels for evaluating the effectiveness of dust control parameters can result in marginal or inadequate plans. A more detailed discussion of the impact of production on the quality of dust control parameters specified in mine ventilation plans is provided later in this document (in sections III.C.1. and IV.B.). Currently, MSHA relies on information provided by the operator to determine at what production level the plan should be evaluated. No production records are required for each MMU. Although operators must submit production data on a quarterly basis, the data is compiled for the entire mine. In addition, these quarterly reports provide information on the amount of clean coal produced, which are much lower than the tonnage of total material produced, and are not useful for establishing what constitutes a ''normal production shifts'' for sampling purposes.

A follow-up survey conducted by MSHA in 1994 found that 43 percent or 539 of the 1,245 producing MMUs, worked at least a 9-hour shift. The Task Group also concluded that current regulations limiting the duration of sampling to eight hours do not provide for adequate assessment of respirable dust exposure during nontraditional shifts of more than eight hours.

Implementation of the Task Group recommendations would have required regulatory change. The effort to implement these changes was suspended pending the recommendations of Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, which was convened in 1995.

B. Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers

On January 31, 1995, the Secretary of Labor established the *Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers* (the Advisory Committee). The Advisory Committee was chartered to ''make recommendations for improving the program to control respirable coal mine dust in underground and surface mines in the United States.'' The Advisory Committee identified and addressed many of the same issues considered by the Task Group. Findings and consensus recommendations were developed for each issue (MSHA, 1996). The Advisory Committee concluded that the dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment. They concluded that the initial evaluation, approval, in-mine verification and monitoring to demonstrate the effectiveness of the operator's proposed dust control plan is critical for the protection of miners from lung disease. Also, believing that the credibility of the current system of mine operator sampling to monitor compliance with exposure limits has been severely compromised, the Advisory Committee concluded that restoration of miner and mine operator confidence in the respirable coal mine dust sampling program should be one of MSHA's highest priorities. Accordingly, there was unanimous agreement that in order to restore confidence in the program MSHA should take full responsibility for all compliance sampling currently being carried out by mine operators under 30 CFR parts 70 and 90.

The November 1996 Advisory Committee Report recommended numerous improvements for the federal program to protect miners from simple CWP, PMF, and silicosis. Of these, the following have been incorporated in this proposal:

1. MSHA should take full responsibility for all compliance sampling at a level which assures representative samples of respirable dust exposures under usual conditions of work without adversely impacting the remainder of the Agency's resources and responsibilities.

2. MSHA should, in consultation with the operator, perform scheduled independent dust monitoring to verify the operator's plan.

3. MSHA should redefine the range of production levels which must be maintained during sampling to verify the plan. The value should be sufficiently close to maximum anticipated production level in order to reasonably assure that the plan would be effective under typical operations.

4. MSHA should review compliance and production records to determine when there is a need for plan verification and modification.

5. MSHA should require that the results and monitoring of dust control parameters and production be recorded in order to correlate dust control parameters with dust measurements.

This proposal is intended to eliminate overexposures on individual shifts and to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program by addressing the shortcomings identified by the Task Group and the Advisory Committee in the current respirable coal mine dust program. The proposal would revoke the operator dust sampling programs under 30 CFR parts 70 and 90 and require the implementation of mine ventilation plans demonstrated to be effective in maintaining respirable dust at or below the applicable standard on each shift. These ventilation plans would be verified by MSHA using single, full-shift respirable dust samples. The plans' effectiveness would be monitored on a regular basis by the use of inspector single, full-shift samples. The proposed rule regarding the use of single, full-shift measurements of respirable coal mine dust to determine average concentration is also published in today's **Federal Register**.

MSHA recognizes that the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers made several recommendations that also impact on surface coal mine workers. These surface coal mine issues will be addressed by the agency in a separate rulemaking which is currently underway. The scope of that rulemaking will include many of the issues that are addressed in this underground rule including requirements for duct control plans, verification of dust control plans prior to approval, on shift examination of dust control measures, and the elimination of operator sampling for compliance purposes.

III. General Discussion

This section describes the current respirable coal mine dust program and the role of mine ventilation plans in safeguarding the health of miners. Specifically, this section details:

(1) The reasoning behind MSHA's decision to revoke the operator dust sampling programs under 30 CFR parts 70 and 90 and to take full responsibility for all compliance sampling;

(2) The proposed procedures for arriving at an average quartz percentage that is used to establish an applicable dust standard under §§ 70.101 and 90.101;

(3) The existing means for evaluating the effectiveness of dust control parameters stipulated in mine ventilation plans;

(4) The plan approval process;

(5) Methods of assuring compliance with plan requirements; and

(6) MSHA's efforts to monitor plan effectiveness on a regular basis.

There is also a detailed discussion of the hierarchy of dust controls and the continued need for mine ventilation plans to specify dust control parameters in order to preserve the primacy of engineering controls. Finally, as a possible alternative to plan verification, we have included a discussion and a request for comments on the application of personal continuous monitoring technology which is, or may become available, to prevent overexposure on individual shifts.

A. Revocation of the Operator Dust Sampling Program

Under the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) coal mine operators were required to take accurate dust samples at periodic intervals to measure the amount of respirable dust in the mine atmosphere where miners work or travel. The Coal Act also required that citations be issued whenever respirable dust samples collected either by an operator or by federal mine inspectors showed noncompliance with the applicable dust standard. The Coal Act was amended in 1977 (Mine Act), but the respirable dust provisions remained essentially unchanged.

1. Pre-1980 Sampling Program

In 1970, federal regulations were issued that established the first comprehensive coal mine operator dust sampling program. Those regulations required the environment of the occupation on a working section, or MMU, exposed to the highest respirable dust concentration to be sampled—the ''high risk'' occupation concept. All other miners working in the MMU in less risky occupations were assumed to be protected from excessive concentrations of respirable coal mine dust if the high risk occupation was in compliance. Under the program, each operator was required to initially collect and submit ten valid respirable dust samples to determine the average dust concentration (across ten production shifts). If analysis showed the average dust concentration to be within the applicable dust standard, the operator was required to submit only five valid samples a month. If compliance continued to be demonstrated, the operator was required to submit only five valid samples every other month. The initial, monthly, and bimonthly sampling cycles were referred to as the ''original,'' ''standard,'' and ''alternative'' sampling cycles, respectively. When the average dust concentrations exceeded the standard, the operator reverted back to the standard sampling cycle.

Additionally, each working miner was sampled individually every 120 or 180 days, depending on the miner's work assignment, or every 90 days for each miner (now referred to as a part 90 miner) who had a positive chest x-ray for coal workers' pneumoconiosis (CWP) and who elected to exercise the option of transferring to a less dusty area. However, except for the part 90 miner results, these early individual sample results were not used for enforcement, but were forwarded to the National Institute for Occupational Safety and Health (NIOSH) to develop a comprehensive exposure data base for research concerning black lung disease. Each sample was accompanied by a completed mine data card that included, among other things, the occupation and social security number of the sampled miner. This information was also included in the Agency's computer print-out of sampling results that was sent to mine operators.

2. Post-1980 Sampling Program

In 1980, following hearings held throughout the coal fields (in 1977 and 1978), regulations governing operator sampling were substantially revised by reducing the operator sampling burden, to simplify the sampling process, and to enhance the overall quality of the sampling program. The result was to replace the various sampling cycles with a bimonthly sampling cycle and to eliminate the requirement that each working miner be sampled. These are the regulations that currently govern the mine operator dust sampling program. Like the 1970 rules, the current regulations continue to rely on sampling the environment of the DO in the MMU that is exposed to the greatest concentration of respirable coal mine dust, but reduced the number of shifts required to be sampled from ten to five.

Other changes included replacing the requirement that each working miner be sampled individually with the bimonthly collection of one sample from each ''designated area'' (DA) to measure the dust concentrations associated with dust-generating sources in the active workings of the mine, such as along haulage ways, at underground crushers, or at transfer points. These locations are strategically selected so that the environment where miners normally work or travel is monitored for compliance with the applicable dust

standard. The operator's approved ventilation plan identifies the specific locations where DA samples are required to be collected and the dust control measures used at these locations. Another change was to increase the frequency of sampling part 90 miners from every 90 days to one sample every 60 days.

The revised regulations also eliminated the reporting of personal identifiers on the dust data card due to miner concerns that the data may be used by mine operators to characterize the exposure of an individual miner in future black lung claims. It also provided for sampling equipment to be properly maintained and calibrated, and examined during the shift. Additionally, operators' were required to demonstrate a certain level of competence by passing a test administered by MSHA. Since proper use of sampling equipment is essential to the integrity of the sampling process, the certification requirement was intended to provide reasonable assurance that the person conducting sampling was competent to perform the task. After samples have been collected, certified persons are required to properly fill out the dust data card that accompanies each filter cassette. These samples must then be transmitted unaltered to MSHA within 24 hours after the end of each sampling shift, to expedite compliance determinations and minimize periods of miner overexposure.

While not specified in the regulations, operators are permitted by practice to note on the dust data card any reason why they believe the sample(s) transmitted are not valid and should not be used by MSHA to determine compliance. Generally, such samples are voided by MSHA and the operator is required to submit a substitute sample within that bimonthly sampling period.

MSHA may also determine that an operator sample is invalid for many of the same reasons. MSHA may also void operator samples for technical and administrative reasons, such as samples submitted in excess of the number required, or DO samples if they were not taken during a ''normal production shift.'' ''Normal production shift'' is defined in existing §§ 70.2(k)(1), 70.207(a) and (d) as a ''production shift during which the amount of material produced * * * is at least 50 percent of the average production for the last set of five valid samples * * *''

After MSHA has processed the samples, the operator is provided with a report of the sample results, which must be posted on the mine bulletin board for a period of 31 days to provide miners ready access to current information on respirable dust conditions in the mine. Operators are also required to report to MSHA in writing any change in the operating status of the mine, mining unit, or designated area that affects the sampling requirements, within three working days after the change occurs.

An operator who is found to be in violation of the reduced dust standard is issued a citation and must take steps to reduce the dust levels. After corrections have been made, the operator must collect five additional samples within a time period specified by MSHA to demonstrate compliance.

During the development of the 1980 regulations for operator sampling requirements, we received comments that indicated a lack of confidence in our reliance on operator samples for enforcement purposes. In response to these concerns, MSHA published a proposed regulation in 1980 that would have provided miners' representatives the right to observe each phase of the operator dust sampling process with no loss in pay. The proposal intended to promote better cooperation between mine operators and miners in order to improve the effectiveness of the program. In 1985, the Agency decided not to finalize regulations to provide miners' representatives the right to observe operator sampling, stating that compliance with the 1980 revisions to the sampling program had resulted in greater confidence in the overall dust program.

3. Issues Affecting the Credibility of Operator Compliance Sampling

As noted earlier in this proposal, there is general agreement that significant efforts have been made during the past 30 years to reduce dust levels in our Nation's mines. While most mine operators have conscientiously attempted to sample miners' exposure to respirable coal mine dust as required by regulation, because of the actions of some, the operator sampling program continues to be plagued by allegations of fraudulent sampling practices. Despite MSHA's efforts to improve the quality of the operator dust sampling program and to vigorously investigate such allegations and prosecute violators, sampling irregularities continue to be documented involving the physical alteration of the weight of dust collected on the filter, or the collection of samples in low-dust areas of the mine or even outside of the mine.

The Advisory Committee found that during the 10 years prior to the publication of their report, serious questions had been raised regarding the representativeness of respirable dust levels measured by mine operators, the handling of filter cassettes, and the changing of work assignments and/or working conditions during sample collection. The credibility of the operator sampling program was questioned by almost all the representatives of miners who testified before the Advisory Committee. Since 1990, more than 160 mine operators, agents and contractors have pled or been found guilty of submitting fraudulent samples to MSHA. These disclosures correspond with the concerns expressed by critics of the operator sampling program.

Detailed reviews of the respirable dust program by the Task Group and the Advisory Committee identified aspects of the current program that have the potential to negatively affect validity of sampling results which could impact miner health protection and, consequently, its credibility in the minds of the very people the program was designed to protect, the miner. For example, to effectively monitor the mine environment where miners work or travel, it is essential that respirable dust samples are ''representative,'' in that they reflect typical dust conditions to which miners are exposed. The recurrent pattern of disclosures of tampering with the sampling process has highlighted the vulnerability of the current monitoring system to the submission of unrepresentative samples. For example, during the period 1980 to 1990, over 137,000 of the 750,000, or approximately 18 percent of the operator DO samples showed extremely low concentrations (less than or equal to 0.1 mg/m^3), compared to 10 percent for the MSHA samples. Since 1990, 14 percent of the operator DO samples and 3 percent of the MSHA samples were equal to 0.1 mg/m^3.

The fact that sampling is controlled by the mine operator also allows the operator to determine when and under what conditions samples will be collected during all current bimonthly and abatement sampling. This permits the operator to conduct sampling during those periods in the mining cycle when conditions are anticipated to result in lower dust levels in the mine environment. For example, the operator may choose to sample during periods when the volume of air on the MMU is greatest or when ventilation controls are operating at optimum efficiently. Accordingly, these sample results may not be representative of typical exposure levels. Other aspects of the monitoring system that may allow the submission of unrepresentative samples were reported by the Task Group in its report of

findings. Because some operators do not sample every bimonthly period or fail to submit the required number of bimonthly samples, miners may be potentially exposed to excessive levels of respirable dust.

4. Proposed Reforms to the Respirable Dust Monitoring Program

Believing that one of MSHA's highest priorities must be to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program, one of the Advisory Committee's key recommendations was that MSHA take full responsibility for all compliance sampling at a level which assures representative samples of respirable dust exposure under usual conditions of work. It also recommended that compliance sampling should be carried out at a number and frequency at least at the level required of operators and MSHA.

Accordingly, MSHA is proposing to revoke the operator dust sampling programs under 30 CFR parts 70 and 90 and to take full responsibility for all compliance sampling (i.e., bimonthly and abatement sampling), in a manner that it believes will be more protective than the current operator sampling program. MSHA intends to monitor miners' dust exposure and compliance with the dust control provisions of the approved mine ventilation plan, or with the respirable dust control plan for a part 90 miner at underground mines, in accordance with the procedures and guidelines established in Chapter 1 of the Coal Mine Health Inspection Procedures Handbook, as modified herein.

(a) Bimonthly Sampling

MSHA would collect a full-shift sample from the working environment of at least five different occupations, if available, on each producing MMU, instead of sampling only the DO for five consecutive shifts or on shifts worked on five consecutive days as under the current bimonthly sampling program. Proposed revised § 70.2(j) defines full shift, for purposes of bimonthly compliance sampling, as the entire work shift including travel time but excluding any time in excess of 480 minutes. A full-shift sample would also be collected from each DA located inby the section dumping point (*i.e.*, intake air and roof bolter DAs) bimonthly, and from all other DAs once each year. All part 90 miners would be sampled bimonthly as under the current program.

MSHA would issue a citation for noncompliance when a single, full-shift measurement demonstrates, at a high level of confidence, that the applicable dust standard is exceeded. Although MSHA would collect multiple occupational samples from each MMU, we would issue only one citation on a single shift on any one MMU unless more than one dust-generating source was involved.

(b) Abatement Sampling

Under this proposal, MSHA would also assume responsibility for all abatement sampling. As recommended by the Advisory Committee, MSHA would utilize single, full-shift samples to demonstrate abatement. Since the criteria under which the effectiveness of ventilation plans are required to be verified are significantly more stringent than those for bimonthly sampling, MSHA does not anticipate issuing many citations to MMUs and sectional DAs. However, should an MMU be cited for violation of the applicable dust standard, and a determination be made by the inspector who was onsite that the dust control parameters are no longer adequate for the present operating conditions, MSHA would require the operator to revise the dust control portion of the mine ventilation plan under proposed § 70.219. MSHA would then verify the effectiveness of the revised plan. Citations for violating the applicable dust standard would not be based on verification sampling.

If on the other hand, a determination is made that a change in the plan is not warranted, the operator would take corrective action to prevent miners from being exposed on subsequent shifts. MSHA would then sample the MMU, similarly to bimonthly compliance purposes described previously in paragraph (a) of this section. All five of the occupational samples taken on a single shift would have to be below the applicable standard to demonstrate abatement. If any sample result exceeds the applicable standard, but not at a sufficiently high level of confidence to warrant a citation, then MSHA may sample additional shifts or initiate the plan verification process.

We solicit comments on whether MSHA should require a higher level of confidence that the applicable standards are being complied with before abating a citation for excessive dust. Specifically, should abatement determinations be based on the critical values specified in § 70.209? We also solicit comments on whether abatement sampling should be conducted at or above the Verification Production Level (VPL) as defined in § 70.2(aa). Requiring that abatement be demonstrated under more typical production conditions, as represented by the VPL, would provide assurance that miners will continue to be protected on a majority of the production shifts.

MSHA proposes to conduct abatement sampling involving non-MMU DAs and part 90 miners in the same way as it conducts bimonthly sampling. A violation would be abated if the result of an abatement sample was less than the applicable standard. If sample results exceed the applicable standard but not at a sufficiently high level of confidence to warrant a citation, MSHA may collect additional single, full-shift samples.

As in the case of MMU abatement samples, we solicit comments on whether MSHA should require a higher level of confidence that abatement samples for non-MMU DAs and for part 90 miners demonstrate compliance with the applicable standards before abating a citation for excessive dust. Specifically, should abatement determinations be based on the critical values specified in § 70.209?

(c) Advantages of MSHA Compliance Sampling Over Existing Program

According to section 101(a)(9) of the Mine Act, no health standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health standard.

For the reasons listed below, MSHA believes that, through the joint promulgation of this proposed rule and the proposed single, full-shift sample rule, miners would be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust and quartz dust on every shift.

- Providing and maintaining a work environment free of excessive levels of respirable dust is essential for long-term health protection. While monitoring of the work environment provides an indication of how effective the existing dust control measures are, monitoring alone does not control dust levels. Requiring mine operators to implement and maintain dust control parameters which, for the first time, have been determined effective under typical mining conditions, will provide reasonable assurance that no miner will be overexposed on individual shifts.
- Implementing single, full-shift sample determinations will more likely detect excessive dust concentrations and thus protect miners. Averaging samples taken on multiple shifts can mask overexposures on individual shifts. Although MSHA would be sampling fewer shifts, MSHA believes the proposed sampling methodology

would provide a more accurate representation of dust conditions to which miners are exposed.

- Under the existing operator sampling program, only the DO is sampled. Under the proposed program, MSHA would sample multiple occupations on the same shift. This would provide a more comprehensive assessment of dust conditions to which miners are exposed.
- Since MSHA will be doing all the sampling, we will be able to monitor the dust control parameters and work practices in effect during sampling. This will enable MSHA to determine the effectiveness of the operator dust control program.
- Unlike the current sampling program, which allows operators control over when to sample and under what operating conditions, MSHA's visits will be unannounced. As a result, all phases of the mining cycle are likely to be sampled eventually (*i.e.,* construction activity, longwall start-up, turning crosscuts, etc.), and samples should be more representative of typical mining conditions.
- The miners' representative will have walkaround rights during sampling, thereby increasing miners' confidence in the dust sampling program.

B. Procedures for Setting the Applicable Dust Standard When Quartz is Present

Section 202(b)(2) of the Mine Act and the implementing MSHA regulations require each operator to continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 mg/m^3. Under current MSHA regulations in §§ 70.101, and 90.101, the applicable coal mine dust standard is lowered further, by means of a formula (10 divided by the percentage of quartz) prescribed by Secretary of Health, Education, and Welfare in 1971, whenever the respirable coal mine dust in the mine atmosphere of the active workings contains more than five percent quartz. [2] This is based on the recognition that the toxicity of coal mine dust increases when higher levels of quartz are present. Consequently, as the quartz content of respirable coal mine dust present in the mine atmosphere increases over five percent, the applicable respirable coal mine dust standard is correspondingly lowered. For example, if 10 percent quartz was present, the mine operator would have to continuously maintain respirable dust at or below 1.0 mg/m^3.

The following provides an overview of MSHA's current and proposed revised procedures for arriving at an average quartz percentage that is used to establish an applicable dust standard.

1. Current Procedures

Until 1985, the applicable dust standard was adjusted based on the percentage of quartz determined from a single, full-shift (8 hours or less in duration) respirable dust sample taken by an MSHA inspector. Since MSHA sampled less frequently than we currently do, a reduced standard could remain in place anywhere from 12 to 24 months. During that period the level of quartz could have either increased or decreased significantly. As a result in December 1985, MSHA implemented the procedures in effect. This program, for the first time, enabled mine operators to participate voluntarily in the process of setting reduced dust standards. These procedures are contained in Chapter 1 of MSHA's Coal Mine Health Inspection Procedures Handbook.

The most significant program change involved the use of individual quartz percentages determined from one MSHA and, under certain conditions, up to two coal mine operator full-shift respirable dust samples, referred to as ''optional samples,'' to arrive at an average quartz percentage. It also provides for the automatic reevaluation of work areas and occupations on a reduced dust standard every six months.

Under the existing system, if an MSHA sample contains more than five percent quartz, an operator is afforded the opportunity to submit an optional sample. Provided it has sufficient weight gain (0.45 mg), the quartz content will be averaged with the MSHA sample when sample results do not differ by more than ± 2.0 percent, and the standard set accordingly. If an operator fails to submit an optional sample or it contains insufficient weight for analysis, the standard is adjusted based on the MSHA sample alone. Operators are afforded the ability to submit a second optional sample whenever sample results differ by more than ± 2.0 percent. All three results are then used to compute the average quartz percentage.

Also, in November 1994, MSHA refined its analytical procedure enabling us to analyze inspector low-mass respirable dust samples (0.100 to 0.449 mg) for quartz. Only those samples containing 25 micrograms or more of quartz were used in the standard-setting process. However, this change applied only to filters that were preweighed to 0.001 mg for use by MSHA enforcement personnel. It did not apply to operator-submitted optional samples, which were collected with filters preweighed to 0.01 mg, for which we required a minimum of 0.45 mg of dust to be analyzed for quartz. The ability to accurately analyze samples containing small amounts of dust reinforced MSHA's views about the severity of quartz exposures in some coal mining operations.

A review of MSHA data for FY 1999 shows that of the 778 entities (*i.e.,* MMUs, DAs, designated work positions (DWPs), roof bolters, and part 90 miners) (MSHA, Results of Quartz Sampling Operator Involvement, 1999) placed on an initial reduced standard as a result of an MSHA sample containing more than five percent quartz, 753 (96 percent) of the entities submitted an optional sample. One would expect the level of participation to be high since failure to respond would result in the setting of a lowered dust standard based on the result of the MSHA sample, which first triggered the standard-setting process. Of the 753 entities submitting an optional sample, 231 were afforded the ability to submit a second optional sample (Ibid.). Again, as expected, over 73 percent (170) of those 231 entities submitted a second optional sample, probably because doing so could reduce the quartz average quartz percentage used to establish the applicable dust standard. For comparison, in FY 1992, 93 percent of the operators afforded the opportunity submitted an optional first sample, and 82 percent of the operators given the opportunity submitted a second optional sample.

However, as the following data show, operator participation tended to decline significantly when operators were given the opportunity to submit samples involving established entities on reduced standards. Of the 1122 entities given the option to submit a sample, only 450 or 29 percent responded, compared to 96 percent for entities placed on an initial reduced standard. In 1992, 32 percent of the operators elected to participate.

2. Proposed Revised Procedures

Consistent with MSHA's decision to assume full responsibility for compliance sampling, the Agency is also proposing to rely only on MSHA samples as the basis for setting the applicable dust standard when quartz is present. As discussed below, while the proposed scheme reduces the burden and cost on mine operators to take and

[2] The applicable dust standard for intake air in § 70.100(b) and for miners who have exercised rights under part 90 regulations in § 90.100 is 1.0 mg/m^3. Those standards are also lowered if quartz exceeds 5 percent. However, no effect occurs until the quartz content exceeds 10 percent.

submit optional samples, it does not diminish the protections afforded operators under the current program. It continues to consider temporal variability associated with quartz determinations by averaging three MSHA samples collected on different shifts. MSHA recently published a proposed ''Program Policy Letter (PPL) on Samples Used to Determine the Respirable Dust Level When Quartz is Present'' for public comment [64 FR 65671, November 23, 1999] whereby the applicable dust standard would be set based on the results of multiple MSHA samples. It proposes that mine operator samples would no longer be used in combination with MSHA samples to determine the average quartz percentage that is used to set an applicable dust standard. In the proposed rule, MSHA is adopting the sampling approach set out in the PPL. The proposed rule supercedes the proposed PPL, and consequently, the proposed PPL is withdrawn.

We believe that results under the proposed process will be more representative of the quartz level to which miners are exposed. Unlike the current process, which may cause a standard to be set based on the quartz content of a single MSHA sample, three valid MSHA samples would be used to set a reduced standard under the proposed revised procedures [64 FR 65671].[3] Since MSHA is sampling underground mines bimonthly and surface mines semi-annually, we will have no difficulty in collecting the required number of samples to arrive at the average quartz percentage. If initial sampling shows that miners may be exposed to excessive levels of quartz, MSHA intends to sample at a greater frequency to ensure that miners are being protected. This level of sampling should also allay any operator concerns regarding the collection of ''misleadingly high'' samples during atypical periods. MSHA would also begin reporting quartz levels to the nearest tenth of a percent. This is intended to be more protective for the miner than the current truncation of results to a full percentage point.

Under the proposed revised procedures, when an MSHA sample contains more than five percent quartz, we would average the percent of quartz present in three most recent MSHA respirable coal mine dust samples to set the applicable dust standard. If an MMU, DA, DWP, or part 90 miner is already on a reduced standard, a new applicable dust standard will be established by averaging the results of the first two MSHA samples taken under the proposed procedures with the quartz percentage associated with the reduced standard in effect. If fewer than two MSHA samples are taken, the existing reduced standard will continue to remain in effect.

Assume an MMU is on a 1.0 mg/m^3-standard (10 percent quartz). If the first MSHA sample contains 7.2 percent of quartz, the existing standard of 1.0 mg/m^3 would continue to remain in effect. If, however, the next sample contains 16.1 percent, the average quartz percentage would be 11.1 percent [(10.0% + 7.2% + 16.1%) ÷ 3 = 11.1%], resulting in a 0.9 mg/m^3≤-standard (10 ÷ 11.1% = 0.9 mg/m^3). For MMUs, DAs, DWPs, or part 90 miners not on a reduced standard, MSHA would collect and analyze three samples for quartz to determine if a reduced standard was warranted.

Under the proposed procedures, if the newly-established standard is lower than the one in effect, the new standard would become effective seven days after the date of the notice informing the mine operator of the change in the applicable dust standard. However, if it is higher than the current standard, the newly-established dust standard would become effective on the date of the notice.

As published elsewhere in today's **Federal Register**, MSHA is also proposing to take enforcement actions on the basis of inspector single, full-shift, respirable dust measurements. For entities on a reduced standard, MSHA would delay any enforcement action until the sample is analyzed for quartz. If an exposure measurement significantly exceeds the existing standard and the quartz content of that sample would cause the standard to be lowered below the existing reduced standard, the operator would be cited for violation of the applicable standard currently in effect. On the other hand, if the quartz content of the sample would cause the dust standard and the corresponding citation threshold value (CTV) to increase so that the single, full-shift measurement would no longer indicate noncompliance, no citation would be issued. This is illustrated by way of the following example.

For example, suppose that the MMU is on a 1.3-mg/m^3 standard and a single, full-shift measurement of 1.6 mg/m^3 is obtained. Since this measurement exceeds the applicable standard, the operator is in violation of the standard. However, analysis of the DO sample shows that the sample contained 6 percent quartz which, if used, would result in a 1.7-mg/m^3 standard. This indicates that the quartz level in the environment of the DO has changed, suggesting that the current standard may no longer be valid. Therefore, since the original measurement of 1.6 mg/m^3 is less than the 1.7-mg/m^3 standard that should have been in effect on the shift sampled, a citation should not be issued.

Since MSHA samples are viewed to be more representative of the respirable dust concentration to which miners are exposed, MSHA is proposing to revise section 70.101 to clarify that the Secretary will determine the quartz level by sampling. Operator samples may no longer be submitted for determining the applicable standard. It is our belief that the procedures being proposed for setting reduced standards should be more protective for the miners than those in effect. The proposed approach provides for stringent monitoring exposure to quartz which is consistent with Advisory Committee's recommendation that MSHA increase surveillance and reduce exposure to this serious health hazard.

As under the current program, if operating conditions should change following establishment of a lowered dust standard that affect the level of quartz in the working environment, mine operators or miners' representatives will be able to request MSHA to conduct a quartz reevaluation. In the absence of continuous monitoring, mine operators should be cautious in preventing overexposures when abnormal conditions (such as cutting rock to install an overcast or other frequent but short-lived events involving cutting of rock) are encountered between MSHA sampling visits.

3. Validity of Averaging Percentages

The average quartz percentage used to set the applicable dust standard for a particular sampling location or area of a mine is determined in accordance with accepted mathematical procedures for arriving at an average value from a set of values (*i.e.,* adding together the individual quartz percentages and dividing by the number of analyses that are in the set). MSHA believes that this is the most appropriate method to use.

One commenter who responded to the PPL (op cit.) contended that MSHA's approach of arriving at the average quartz percentage was mathematically incorrect. This commenter recommended that, to more accurately

[3] Unlike MSHA's objective in compliance sampling, the objective in measuring quartz content is to establish a reduced standard that will apply to all shifts. This enables an operator to design a ventilation plan that will be protective on every shift. Therefore, it is appropriate to estimate the quartz content by averaging quartz measurements obtained over an extended time period.

reflect the true quartz concentration, the average quartz percentage be calculated by dividing total mass of quartz in micrograms by the total mass of dust collected (based on three samples in the example submitted). In the commenter's example, the average percentage obtained using MSHA's proposed averaging method was larger than that obtained using the commenter's approach.

The following two scenarios in Table III–1 clearly demonstrate that MSHA's averaging method does not always result in a larger average quartz percentage value.

TABLE III–1.—FOR TWO SCENARIOS, USING ALTERNATE METHODS, PERCENT OF QUARTZ IN RESPIRABLE DUST

Scenario I			Scenario II		
Dust mass	SiO_2 mass	% SiO_2	Dust mass	SiO_2 mass	% SiO_2
1.7	0.136	8	1.7	0.17	10
1.0	0.04	4	1.0	0.08	8
2.5	0.3	12	2.5	0.15	6
MSHA's Method	Average of % SiO_2 = 8		MSHA's Method	Average of % SiO_2 = 8	
Commenter's Method	Sum (SiO_2 Mass) ÷ Sum (Dust Mass) = 9.2%		Commenter's Method	Sum (SiO_2 Mass) ÷ Sum (Dust Mass) = 7.7%	

These examples show that for situations where MSHA would have determined a quartz percentage of 8 percent, the commenter's method would yield 9 percent in one case and 7 percent in the other.

C. Respirable Dust Control Program for Underground Coal Mines

The primary focus of the underground coal mine respirable dust program is to limit the concentration of respirable dust to which miners are exposed in the work environment. To ensure that miners are not being exposed to excessive concentrations of respirable dust, current regulations require mine operators to:

- Design a mine ventilation plan that effectively controls respirable dust under typical mining conditions;
- Implement the plan's dust control parameters when approved by MSHA before commencing production;
- Maintain the dust control parameters specified in the approved plan and to monitor their function and operation through required on-shift examinations; and
- Evaluate their effectiveness with bimonthly samples in order to provide reasonable assurance that the dust control parameters continue to function as intended.

To control dust in the work environment, existing § 75.370 requires mine operators to develop and submit ventilation plans that are designed to control methane and respirable dust in the mine to MSHA for approval. Each plan must be suitable to the conditions and mining system in use at the mine. These plans provide detailed requirements for the protection of miners by specifying engineering controls. These engineering controls may include:

- The quantity and the velocity of the air current used to ventilate the MMU;
- The number, type, and location of water sprays;
- The pressure and quantity of water delivered by the sprays; and
- Additional environmental controls, such as dust scrubbers or devices which collect mine air and filter out dust particles.

Plans also contain procedures for maintenance of dust control equipment used on the mining machine and roof bolter. Mine operators frequently do not fully describe all dust controls in use at the mine. If such information is not fully disclosed, it is impossible for MSHA to fully enforce the plan provisions and to determine when the MMU is out of compliance with the ventilation plan.

When an operator submits a proposed mine ventilation plan or revision in accordance with § 75.370, the MSHA district office reviews it for completeness and adequacy. The District Manager will approve the plan if it meets MSHA requirements, and he is confident that the dust control parameters specified will have a reasonable likelihood of maintaining dust concentrations within the allowable limits. Most proposed plans or revisions are approved immediately, or tentatively approved, based on engineering judgement, or experience, or both, until they are assessed by MSHA inspector sampling or, to a lesser extent and only under certain circumstances, by mine operator bimonthly sampling. Generally, MSHA samples within 60 days of plan approval. Current regulations prohibit a mine operator from initiating any mining activity without an approved ventilation plan. MSHA allows operators to commence mining by granting tentative approval. However, plans may be implemented which are later determined to be inadequate under typical mining conditions under the existing process.

1. Evaluating and Approving Plan Requirements for Respirable Dust Control

Under the current program, the effectiveness of the plan's dust control parameters is assessed through sampling of the DO and other occupations associated with the MMU. Since there is no requirement for verifying plan effectiveness, we have had to rely on samples that may not be representative of dust concentrations to which miners are exposed.

MSHA sampled annually at each underground mine until recently. The Agency now samples bimonthly in each underground coal mine. This increased sampling effort is part of MSHA's initiative to increase confidence in the federal respirable dust program and to eliminate simple CWP, PMF, and silicosis among coal miners. During sampling inspections, we monitor compliance with the applicable dust standard, measure the concentration of respirable quartz dust; and identify occupations other than the DO that the mine operator should routinely monitor because they are at risk of exposure to excessive concentrations of respirable dust.

Under current inspection procedures, MSHA inspectors sample at least five different occupations, if available, on each MMU on each shift. Samples are normally taken under the mining conditions in effect during sampling. In conjunction with this sampling, the MSHA inspector checks and measures the dust control parameters early in the shift to determine whether the ventilation plan is being followed. The inspector records the findings, and all

the dust controls and work practices in use during sampling on MSHA Form 2000–86 (Revised), *Respirable Dust Sampling and Monitoring Data*. MSHA will issue a citation if the mine operator fails to follow any of the dust control parameters specified in the plan. Normally, the citation requires immediate corrective action to abate the violation. This may involve, for example, unplugging some water sprays or increasing the amount of ventilating air delivered to the MMU. At the conclusion of the sampling shift for an MMU, the inspector determines the total amount of material that was mined (in tons) during the shift.

If the average concentration of the samples taken in one shift is less than, or equal to, the applicable standard, and the actual production is at least 60 percent of the average production over the last 30 production shifts, the MSHA inspector will normally terminate sampling after the first day and will recommend that the plan parameters be approved by the District Manager. This would occur even if the samples were found to contain more than 5 percent of quartz. Such a finding could result in MSHA lowering the dust standard below that in effect at the MMU. Since 1985, MSHA has provided mine operators the opportunity to participate in the process to establish a lower dust standard based on the level of quartz. Mine operators can submit up to two optional samples which are averaged with the MSHA sample to determine the average percentage of quartz which is used to establish a new dust standard for the MMU. MSHA published a proposed Program Policy Letter for comment (64 FR 65671, November 23, 1999) whereby the standard would be determined based solely on the results of multiple MSHA samples. Under that proposal, mine operator samples would no longer be used to calculate a reduced dust standard. Instead, applicable dust standards will be set based solely on the results of MSHA samples.

If the average concentration falls below the standard in effect, but one or more samples exceed it, no decision is made regarding the plan's effectiveness or regarding compliance with the applicable standard. Instead, the inspector must collect additional samples on subsequent production days or shifts to establish that the dust control provisions of the ventilation plan are adequate.

To a lesser extent, if MSHA is unable to schedule a mine visit within the period established by the individual district, the District Manager may rely on the results of operator bimonthly sampling to approve a plan. Generally, this occurs in the case where a plan is upgraded with a change which has been established as effective. MSHA does not routinely approve plans based on operator bimonthly sampling because these samples may be collected during periods when production is not reflective of typical production levels. The current program permits the operator to submit samples which may not be representative of normal dust conditions in the working environment. Under current regulations, operator bimonthly samples will be considered valid, unless voided by MSHA, when the MMU produces at least 50 percent of the average level reported for the last set of five valid bimonthly samples. Since a mine's ''normal production'' level for sampling purposes and the typical production level may diverge greatly over the course of several sampling periods, granting approval under these conditions may not reflect the plan's effectiveness under more typical mining conditions.

2. Compliance with Plan Requirements for Respirable Dust Control

Once MSHA determines that the dust control measures are adequate and approves the mine ventilation plan, the specified dust control parameters are to be employed on a continuous basis to safeguard the health of miners. Since maintaining the approved dust control parameters provides reasonable assurance that respirable dust can be controlled, failure to comply with these requirements would defeat the purpose of the mine ventilation plan and needlessly expose miners to excessive concentrations of respirable dust. Section 75.362 requires mine operators to perform an on-shift examination of the dust control parameters before the MMU begins production in order to assure full compliance. Any deficiencies must be corrected before production begins.

Compliance with approved plan parameters is checked during MSHA's routine sampling inspections: as part of six-month plan reviews, during other non-sampling inspections or investigations, or in conjunction with an ongoing sampling inspection.

3. Monitoring Effectiveness of Plan Requirements for Respirable Dust Control

Because of the dynamic nature of mining, conditions can change significantly in a short period of time. For example, an increase in the concentration of respirable quartz dust will require the applicable standard to be reduced below the level that was effective when the dust control parameters were first evaluated. Such changes can directly impact the effectiveness of the dust-control measures. It is important to regularly monitor the adequacy of the approved dust control requirements to ensure that they remain suitable for the current conditions at the mine and to determine whether the plan should be upgraded. Currently, both MSHA and the mine operator regularly monitor the operator's dust control program. However, for MMUs the mine operator is responsible for making sure that all provisions of the ventilation plan are in effect on every shift.

(a) *Monitoring by Mine Operators*. Since 1980, the current regulations have required mine operators to take five valid samples from the DO in each MMU on a bimonthly basis and submit them to MSHA for processing, to determine compliance with the applicable dust standard. Section 70.207(e) identifies the DO for each method of mining. These are collected either on consecutive normal production shifts, or on production shifts worked on consecutive days, during which the amount of material produced by the MMU is at least 50 percent of the average production reported for the last bimonthly sampling period. These samples must be collected portal-to-portal during the entire shift or for 8 hours, whichever time is less.

Bimonthly samples have provided a periodic evaluation of the quality of the air miners breathe. They also have provided some insight into the effectiveness of the operator's dust control system on the days in which the samples are taken. Mine operators may exceed their minimum plan requirements once they have been approved as effective under current evaluation criteria. Currently, there is no requirement for mine operators to record the dust control measures in use as part of the on-shift examination. Because there is no requirement for such records, MSHA cannot assess the continued adequacy of the approved dust control requirements unless the inspector observes the sampling process.

Although the current operator sampling program may limit the utility of bimonthly samples for plan approval purposes, they allow MSHA to identify approved plans that may no longer be suitable to the conditions at a mine. If multiple individual samples, or their average, exceed the applicable dust standard after the required on-shift examination has been conducted, the approved plan parameters may no longer be effective and may need to be upgraded. If cited, the operator must

take corrective action to lower the concentration of respirable dust to within the permissible concentration as described in current § 70.201(d). The operator must demonstrate, through sampling, that the underlying condition(s) which caused the violation has been corrected. Since MSHA inspectors are not present to observe the action(s) taken by the operator to abate the violation, the ventilation plan is usually not amended to include the changes the operators make to the parameters in order to abate the violation. However, if the operator has a record of noncompliance and MSHA determines that the approved plan parameters may no longer be adequate, MSHA will notify the operator to submit an improved plan. Under current plan approval procedures, if the operator fails to address MSHA's concerns after receiving the second notification, MSHA will move to revoke the operator's mine ventilation plan. If the plan is revoked, the mine must not operate.

As discussed earlier, MSHA is proposing to revoke operators' sampling program in underground mines and assume full responsibility for all compliance sampling.

(b) *Monitoring by MSHA*. One of the objectives of MSHA's dust sampling program is to verify that the controls specified in the approved mine ventilation plan continue to control concentrations of respirable dust under existing mining conditions. As part of this program, the dust control parameters must be checked and measured early in the shift to assure compliance with the approved plan. These checks also verify that the operator is performing the required on-shift examinations. Operators have the opportunity to adjust their dust controls to reflect that which has been approved so the plan can be evaluated. However, most operators choose not to make adjustments for a number of reasons. While inspection procedures require the ventilation plan to include the dust control measures in use during the evaluation, most approved plans do not incorporate all the measures that were actually in place during MSHA sampling. This makes it difficult for MSHA to assess the continued adequacy of the approved dust control parameters. Frequently, decisions must be based only on prior experience or engineering judgment.

When an operator is cited based on MSHA samples, the inspector may require the operator to describe what type of corrective action will be taken. However, if a plan change is required, MSHA must follow similar plan approval procedures. The operator must be notified in writing that the plan is inadequate. In this case, MSHA has sample results and a record of the actual parameters in place which can be used to document the need for a plan change. Most plans which are revised simply incorporate only those dust controls that were in use when MSHA sampled.

MSHA reviews each mine ventilation plan every six months under § 75.370. The review includes: all plan revisions, respirable dust inspection reports, citations for exceeding the applicable dust standard, and comments from representatives of miners. When a deficiency in the respirable dust control portion of the plan is found, the MSHA inspector records comments on MSHA Form 2000–86. MSHA sends these results to the mine operator along with an explanation of whether the operator must make any changes, the reasons for the changes, and the date for submitting a plan revision. MSHA will send a second notification if the operator fails to respond. MSHA may revoke the operator's mine ventilation plan if the operator does not comply.

4. Proposed Procedures for Evaluating, Approving, and Monitoring Ventilation Plan Requirements

The dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment, thereby protecting miners. In recognition of this, MSHA's proposal makes a number of changes to the process for evaluating, approving, and monitoring mine ventilation plans, many of which are based on the Advisory Committee's recommendations.

Consistent with the Advisory Committee recommendations, MSHA proposes to add provisions to verify the effectiveness of the ventilation plan in controlling dust, at a production level high enough to demonstrate the plan's effectiveness under typical operating conditions. This would require that MSHA implement procedures for reviewing compliance and production records. It would also require that dust control parameters and production associated with samples on a given shift be recorded in order to demonstrate that parameters specified continue to be effective in controlling dust.

This proposal would require a ventilation plan to include all engineering or environmental controls necessary for maintaining dust concentrations at acceptable levels. A plan must also include any specific work practices or other means used to supplement these controls in order to minimize the dust exposure of individual miners. Unlike plans under the current program, you would have to identify all measures necessary for achieving continuous compliance with the applicable dust standard in the plan.

MSHA proposes to require you to include information on the length of each normal production shift in § 75.371(f) and to specify the VPL as defined in § 70.2 in every ventilation plan. The VPL is the tenth highest production level recorded in the most recent 30 production shifts. This value will represent the minimum production level at which effectiveness of the plan must be demonstrated.

We believe that the production criteria used to evaluate plan effectiveness may not adequately represent typical conditions under which miners work. Requiring that plans be verified at or above the VPL would provide assurance that excessive dust concentrations will be avoided, even on shifts with higher-than-average production. This is more protective of miners than the current practice of evaluating plan adequacy based on MSHA inspector samples taken when production can be as low as 60 percent of the average production.

MSHA would require you to maintain records of the amount of material produced by each MMU during each shift. This would enable you to establish the VPL. Because verification of a plan's effectiveness is conditioned on the VPL, these records are necessary to ensure that the VPL continues to represent higher-than-average production. Although a VPL would be included in the ventilation plan, MSHA would not cite you for producing at levels exceeding the VPL.

Under the proposed plan verification procedures, MSHA will notify you of when we intend to initiate verification sampling. To enable MSHA to evaluate the effectiveness of the plan parameters at or above the VPL, you must make sure that all the dust control parameters specified in your ventilation plan are fully implemented. On the date scheduled for verification sampling, you should arrange to be producing at or above the VPL specified in the plan, using only the dust control parameters and other measures listed in the plan.

Under the proposal, MSHA would perform the sampling necessary to verify your plan. We will collect full-shift samples from the work environment of multiple occupations on each MMU, including the DO. We will collect all samples in accordance with procedures described in Chapter 1 of MSHA's Coal Mine Health Inspection Procedures Handbook (op cit.). In addition, on every shift on which we

collect verification samples, we would measure and record all of the quantitative engineering or environmental parameters. We would also record any other means used to reduce miners' dust exposure on the sampled shift. We will provide you with this information, along with verification sample results, for posting on your mine bulletin board.

In accordance with section 103(f) of the Mine Act, you must provide miners and their representatives the same walkaround rights during plan verification sampling as they are provided during any other physical inspection made pursuant to the provisions of section 103(a) by an authorized representative of MSHA.[4]

Unlike the existing program, the proposal would allow you, for the first time, to use either approved PAPRs or verifiable administrative controls to supplement your engineering or environmental controls for compliance purposes at longwall mining operations. This would be permitted only on an interim basis and only after MSHA determined that you had exhausted all feasible engineering or environmental controls.

Finally, under this proposal, MSHA has established rigorous criteria for determining when to approve a plan. We would approve a plan only when a sufficient number of verification samples demonstrate, at a high level of confidence, that the plan is effective at production levels at or above the VPL.

D. Hierarchy of Dust Controls

Consistent with the Mine Act, engineering or environmental controls have been the principal method used for preventing or minimizing miners' exposure to these primary and secondary dust sources in the workplace over the past 30 years. Control of dust throughout the work environment gives reasonable assurance that all miners in the area will be adequately protected. Well-designed engineering or environmental controls provide consistent and reliable protection to all workers because they are not dependent upon constant human supervision or intervention, except for the periodic checks, to insure that they are functioning as intended. MSHA requires mine operators to utilize all feasible engineering or environmental controls, which are specified in the mine ventilation plan, to maintain concentrations of respirable dust in the work environment of MMUs at or below the applicable dust standard. Engineering or environmental controls include all methods that control the level of respirable dust by reducing dust generation (*e.g.,* machine parameters) or by suppressing (*e.g.*, water sprays, wetting agents, foams, water infusion, etc.), diluting (*e.g.,* ventilation), capturing (*e.g.,* dust collectors) or diverting (*e.g.,* shearer clearer, passive barriers, etc.) the dust being generated by the mining process. The importance of using engineering or environmental controls was not only recognized by the Advisory Committee, but also by NIOSH in its criteria document: *Occupational Exposure to Respirable Coal Mine Dust* (NIOSH, 1995), when it recommended that such controls must continue to be relied upon as the primary means of protecting coal miners. The primacy of engineering or environmental controls is preserved under this proposal. The proposal requires mine operators to utilize all feasible engineering or environmental controls to reduce concentrations of respirable dust to a level at or below the applicable standard.

Administrative controls are another method of avoiding overexposure. Administrative controls refer to work practices that reduce miner's daily exposure to respirable dust hazards by altering the way in which work is performed. They consist of such actions as rotation of miners to areas having lower dust concentrations, rescheduling of tasks, and modifying work activities. The Task Group found that administrative controls were used increasingly, even when it was feasible to implement additional engineering or environmental controls. The use of administrative controls was found to be increasing at mines employing longwall mining systems. The most frequent administrative control in use consisted of restricting the activities of miners required to work downwind of the longwall operator, or the occupation designated as 044 by MSHA. This particular form of administrative control is in use at some of the 51 longwall MMUs that were operating on October 28, 1999. MSHA has observed the use of this particular administrative control, even after changing the location of the DO from the 044 to the 060 occupation—the miner who works nearest the return air side of the longwall working face. Unlike engineering or environmental controls, to be effective, administrative controls rely on the ability of miners to follow specified procedures. However, difficulty in ensuring that miners adhere to the administrative controls, labor/management agreements, and limitations on the number of qualified miners capable of handling specific tasks may limit the use and effectiveness of such controls. The Advisory Committee Report states that the use of administrative controls does not reduce the operator's responsibility to maintain ambient dust levels in active workings at or below the standard. However, the Advisory Committee noted that ''while not a substitute for engineering controls, administrative controls, which restrict the amount of time that miners spend in an area with uniform exposure level, can result in lower personal exposures (MSHA, 1996).''

Under the Mine Act and current regulations, mine operators are required to make approved respiratory equipment available to all affected underground miners whenever exposure to concentrations of respirable dust exceeds the applicable dust standard. However, miners are not compelled to use them. While required for interim protection, mine operators cannot use respirators as a substitute for engineering or environmental control measures. Engineering or environmental controls have been found to provide more consistent and reliable protection to all workers. In comparison to respirator programs, the effectiveness of engineering or environmental controls does not rely heavily upon constant supervision or miners' consistent and correct use of the equipment. Furthermore, we can measure dust concentrations to which miners are exposed when engineering or environmental controls are in use. It is more difficult to monitor the effectiveness of a respirator program because the assessment methods are indirect. For these reasons, MSHA's longstanding policy has been that respirators should be used in underground coal mines only as an interim method of protection until feasible engineering or environmental controls are available.

Approved respirators are not acceptable substitutes for feasible engineering or environmental controls.

[4] MSHA believes that under the guidance of the Interpretive Bulletin 43 FR 17546 (April 25, 1978) these rights arise when: (1) an ''inspection'' is made for the purposes set forth in section 103(a), and (2) the inspector is physically present at the mine to observe or monitor safety and health conditions as part of direct safety and health enforcement activity.

Verification sampling is necessary to obtain information related to approval of the mine's ventilation plan and whether coal mine dust will be adequately controlled to protect miners health. Consequently, miners and their representative would have the right to accompany the inspector with no loss of pay for the time during which the representative exercises this right. However, this right is limited by Section 103(f) to only one such representative of miners.

It is MSHA's position that technology is available to control respirable dust to at or below the applicable standard at MMUs employing continuous and conventional methods of mining. However, MSHA recognizes that, unlike other mining systems, longwall MMUs may have acute dust problems caused by the face-ventilation airstream carrying the shearer-generated face dust over the miners working along the face downwind of the shearer operator (occupation code 044). This makes it more difficult to control the work environment on a consistent basis.

Improvements in dust control technology have not kept pace with increases in production technology associated with high-production longwall MMUs. Average longwall shift production reported during bimonthly sampling has increased more than five-fold since 1980, from approximately 890 tons per shift (tps) to more than 4,900 tps in 1998. In fact, 49 percent of the shifts sampled averaged 4,000 to 8,000 tps, while approximately 8 percent of the shifts exceeded 8,000 tps. A major milestone in mining history was achieved in 1997, when a single longwall mine produced more than 1 million tons of coal in a single month (Fiscor, 1998).

Unfortunately, as more coal is mined, greater quantities of respirable dust are generated. The increase in longwall production levels has resulted in the generation of far more dust which must be controlled (Webster, *et al.,* 1990; Haney, *et al.,* 1993; O'Green, 1994). According to published literature, several thousand milligrams of respirable dust per ton of coal cut can be formed and liberated during the cutting process (National Research Council, 1980). Of course, the quantity of respirable dust produced by the cutting process can vary greatly, depending on the type of coal, its moisture content, the amount of rock bands in the coal, sharpness of the cutting bits, the particular mining machine, and many other factors. Although a considerable amount of respirable dust is formed by the cutting operation, most of these particles do not become airborne. Nevertheless, given the amount of dust that is produced per ton of coal mined, a larger quantity of respirable dust would be generated from cutting 8,000 tons of coal than from cutting 4,000 tons. An operator is not required to produce, on a sampled shift, more than 50 percent of the average production reported during the last bimonthly period. Therefore, dust concentrations on sampled shifts may be substantially lower than what is typical and therefore not reflect the dust exposure on that shift.

While significant efforts have been made to implement available control technology, no significant new advancements in longwall control technology have been reported since 1989 (U.S. Bureau of Mines, undated). From 1989 to 1999, the percentage of operators' longwall DO samples exceeding 2.0 mg/m^3 dropped from 34 percent to 20 percent, reflecting the impact of the implementation of those advances in longwall control technology. Although this represents a significant improvement, especially in view of the five-fold increase in average shift production, the 1999 data clearly show that miners continue to be overexposed on a significant number of shifts.

Over the past ten years, MSHA and the former U.S. Bureau of Mines, now part of NIOSH, have made unsuccessful efforts to conduct a joint research program that would evaluate the effectiveness of available longwall dust control technology. The objective of such research would have been to quantify the effects of employing all state-of-the-art dust-control technology available for a longwall operation. Unfortunately, such a study has never been undertaken because no industry partner has agreed to participate. Based on our experience, MSHA's position remains that feasible engineering and environmental controls exist for maintaining dust exposures at or below the applicable standard, even at longwall operations. MSHA has concluded that the proposed plan verification process will lead to further improvements in the design and quality of mine ventilation plans. At some high-producing longwall MMUs, however, the engineering or environmental controls available may not succeed in sustaining continuous compliance with the applicable dust standard at certain locations downwind of the longwall operator (occupation code—044).

Mining industry representatives have repeatedly urged MSHA to accept the use of powered, air-purifying respirators (PAPRs) (*e.g.,* Racal® Airstream helmets),[5] as an alternative means of complying with the applicable dust standard when engineering or environmental controls failed or were not feasible. The Airstream helmet originated in the early 1970s at the Safety in Mines Research Establishment in England which developed it primarily for mining use to provide protection for head, eyes, and lungs in a single convenient unit. Because these devices provide a continuous stream of filtered air over the miner's face, it has been suggested that they be viewed as miniature environmental controls, rather than respirators. In September 1997, Energy West Mining Company (Energy West) petitioned the Secretary of Labor to amend the mandatory health standards for underground coal mines at 30 CFR part 70 to allow Airstream helmets or other types of PAPRs to be used as a supplemental means of complying with the applicable dust standard. The petition for rulemaking proposed that the Secretary issue a standard which would supersede the current interim statutory standard, specified in Section 202(h) of the Mine Act. Energy West contended that PAPRs are necessary as a supplemental means of controlling respirable dust because even the most diligent application of feasible engineering/environmental controls could not always prevent overexposure. MSHA has consistently acknowledged that PAPRs can be effective as an interim method of protecting miners when properly selected, used, and maintained. However, MSHA has never considered the Racal® Airstream helmet (or the 3M™ Airstream™ Helmet-Mounted PAPR), or any other respiratory protective device approved and labeled as such by the National Institute for Occupational Safety and Health (NIOSH), to be an engineering, environmental, or administrative control. Hence, it cannot be used as an environmental control to comply with the respirable dust standard.

In order to provide the greatest possible protection for all miners under typical mining conditions, MSHA is proposing to permit, under certain circumstances, the limited use of either approved loose-fitting PAPRs or verifiable administrative controls for compliance purposes. This would provide you with the flexibility to select the most appropriate option for supplementing your engineering or environmental controls. We believe that permitting longwall mine operators to use loose-fitting PAPRs or verifiable administrative controls for compliance purposes will not reduce the level of protection afforded longwall miners by the existing standard.

This aspect of the proposal is limited to longwall mine operations because technology is available to control respirable dust at or below the applicable standard at MMUs employing continuous and conventional methods of mining. Their use at longwall operations would be permitted

[5] References to specific equipment, trade names or manufacturers does not imply endorsement by MSHA.

only after MSHA determines that for a specific MMU, excessive dust concentrations cannot be prevented in the environment of miners required to work downwind of the longwall shearer operator (occupation code—044) by implementing all feasible engineering or environmental controls. We solicit comments concerning the availability of feasible engineering or environmental controls to lower dust levels.

1. Selection of Respirators: Loose-Fitting PAPRs

Loose-fitting PAPRs completely surround the head and cover the face with a full visor or shield. The functional and physical characteristics of loose-fitting PAPRs as described below make them especially well-suited to underground coal mining conditions, and it is for these reasons that MSHA determined that loose-fitting PAPRs are the most suitable type of respirator protection for these conditions.

A loose-fitting PAPR protects the wearer from excessive levels of respirable dust by providing a continuous flow of filtered air and imposing minimal breathing resistance upon the wearer. Loose-fitting PAPRs do not require fit-testing,[6 7] unlike tight-fitting respirators. Furthermore, it is not necessary to be clean shaven for this type of PAPR to be protective.

Loose-fitting PAPRs provide safety advantages over other forms of PAPRs or tight-fitting respirators. In addition to protecting the lungs, the helmet and visor of a PAPR can simultaneously protect the eyes and head from high-velocity nuisance dust, spray, and small pieces of coal from the cutting drums and face and from loose coal falling from the roof. Loose-fitting PAPRs provide easier communication between miners, rather than the muffled communication between workers which is experienced between miners wearing tight-fitting facepieces.

The Racal® Airstream helmet has been in use in underground coal mines since the late 1970s. Over 50 percent of the longwall mines operating have miners who wear Airstream helmets for added protection. This respirator was developed primarily for mining use by the Safety in Mines Research Establishment (SMRE) in England. It combines face, head, and respiratory protection in a single convenient unit. The support hardware which provides the filtered air is packaged in the helmet. Power for the system is provided by a belt-mounted battery. Dusty air enters the helmet through a rear entrance port, passes through a pre-filter assembly that removes the coarse material, and then passes through the fan and into a final-filter assembly that is located between the head of the wearer and the outer helmet shield. The filtered air then sweeps down across the wearer's face, behind the face-shield visor, and exits at the chin. Soft plastic seals join the face-shield visor to the sides of the head and jaw limiting entry of unfiltered mine air (Greenough, 1979). The original Airstream helmet has undergone numerous design improvements since it was first introduced in British coal mines in the mid 1970s. The Airstream helmet is produced by 3M (3M™ Helmet-Mounted Airstream™ series).

2. Protection Factor for Loose-fitting Powered, Air-Purifying Respirators

The type and degree of protection of any respirator depends on the ability of a respirator to prevent hazards from entering the worker's breathing zone. In an underground coal mine, the level of protection afforded by a loose-fitting PAPR to protect a miner depends on the type and condition of the filter material of the air-purifying element, the nature and concentration of the respirable coal mine dust, proper maintenance of the PAPR and battery pack, and especially, how consistently the miner properly wears the PAPR, including having the visor properly lowered. The protection factor, the ratio of the respirable dust concentration outside the respirator to the concentration inside, measure how much protection a respirator might provide to the wearer.

In the *NIOSH Respirator Decision Logic* (May 1987), based on simulated laboratory tests and some workplace protection tests (none of which replicated conditions in underground coal mines) NIOSH assigned loose-fitting, helmeted PAPRs, properly worn, a protection factor (APF) of 25. NIOSH made the following cautionary statement:

> Despite the fact that some of the PF's [APFs] have a statistical basis, they are still only estimates of the approximate level of protection. It must not be assumed that the numerical values of the APF's presented in this decision logic represent the absolute minimum level of protection that would be achieved for all workers in all jobs against all respiratory hazards. The industrial hygienist or other professional responsible for providing respiratory protection or evaluating respiratory protection programs is therefore encouraged to evaluate as accurately as possible the actual protection being provided by the respirator (NIOSH, May 1987).

Furthermore, in its *Guide to Industrial Respiratory Protection* (September 1987), published after the *NIOSH Respirator Decision Logic,* NIOSH offered an additional caveat with regard to the effectiveness of PAPRs:

> Until recently, powered air-purifying respirators were considered positive pressure devices. Field studies by NIOSH as well as others, have indicated that these devices are not positive pressure, and that their assigned protection factors are inappropriately high (NIOSH, September 1987).

There is virtually no positive pressure in the PAPR. Respirable dust may invade the miners' breathing zone through openings along the side and bottom of the visor, even when it is maintained in the full lowered position. The extent to which respirable dust invades a miner's breathing zone, depends, in part, on the MMU's ventilation air velocity and on the miner's work rate and his angle of orientation to the airflow.

Questions have arisen concerning the applicability of NIOSH's APF of 25 for loose-fitting PAPRs to some work environments. It has been contended that NIOSH overestimates the minimum level of protection provided in the workplace even when used within the context of a good respirator program (Myers, *et al.,* 1984). The environmental conditions assumed in NIOSH's estimation of the APF for loose-fitting PAPRs are not consistent with those in underground longwall mining operations. For example, various unique conditions of coal mining (obstructed views and difficulty communicating) may compel miners to lift their visors. Once the visor is raised, the respirator is no longer being worn in accordance with conditions required for an APF of 25. Also, the high velocities of air customarily found on longwall mining faces, are not comparable to the air velocities experienced in most industry sectors nor in those represented in the studies used to determine the APF of 25. The actual fit or seal of the respirator helmet to the wearer, repeated work-task motions in confined work spaces, raising the visor, and high air velocities along the longwall face all may significantly reduce the actual degree of protection provided in the workplace. Unlike an APF, an effective protection factor (EPF) reflects the protection provided by a respirator over an actual work shift given specific occupational environmental conditions such as ventilation velocity, when the wearer performs typical work activities and uses the respirator in a typical manner.

Laboratory and in-mine studies (EPF studies) show that mine ventilation air flow or velocity, the primary means

[6 7] Quantitative fit testing and qualitative fit testing are methods used to determine the facepiece seal and fit of a tight-fitting respirator.

longwall operators use to control respirable dust levels, may be the single biggest factor affecting the level of protection provided by the PAPR on a longwall mining face. Cecala, *et al.*, (1981) found protection of loose fitting PAPRs (Racal® Airstream helmets) to be inversely related to ambient air velocity in both laboratory and in-mine settings (Ibid). In other words, increased air velocity leads to decreased effectiveness of the PAPR.

The level of protection from a loose-fitting PAPR is also affected by the orientation of the helmet to the airflow. Cecala's wind tunnel tests clearly showed that, at the higher flow rates, helmet efficiency was greatest when facing directly against the airflow and was reduced when the helmet was oriented in other directions. This is extremely important since miners are more likely to orient their heads at an angle to the airflow, or to face downwind, than to face directly into the airflow.

Cecala's in-mine testing of the loose-fitting, helmeted PAPRs produced an EPF confirming the inverse relationship between wind speed and the level of protection provided by PAPRs shown during wind tunnel testing. Air velocity in underground mines is measured in units of feet per minute (fpm). Under normal face-velocity conditions (less than 400 fpm), the Airstream helmet averaged a respirable dust reduction of 84 percent, which is equivalent to an EPF of 6.4. However, under high face-velocity conditions (1,200 fpm), the helmet's dust reduction efficiency decreased significantly, averaging only 49 percent, which is equivalent to an EPF of 2.

Other researchers have reported that helmeted PAPR systems are vulnerable to inward leakage into the wearer's breathing zone (Howie, *et al.,* 1987; Sherwood, 1991). For example, Howie, *et al.,* found that increasing airflow velocities from approximately 400 to 800 fpm doubled the inward leakage of the helmet when the airflow impinged on the wearer's head only, and increased the leakage further when the airflow impinged on the wearer's body and head (Howie, 1987). Subsequent testing of a redesigned unit at a wind velocity of approximately 700 fpm showed decreased inward leakage, yielding a protection factor of 6.3. This met the target protection factor of 5, which was subsequently proposed by the European Community to be the standard for powered helmet respirators.

More recent studies conducted by Bhaskar, *et al.* (1994) at four medium-velocity western longwalls indicated loose-fitting PAPRs had an average dust reduction efficiency of 83.8 percent (Ibid.). Although a different sampling procedure was used, this result is consistent with the average value of 84 percent obtained by Cecala, *et al.,* under normal mine face-velocity conditions. During the test period, the headgate velocity ranged from 345 to 500 fpm, with approximately 88 percent of the recorded velocities falling below 500 fpm. The tailgate velocities ranged from 280 to 550 fpm and only one exceeded 500 fpm. No tests were conducted under high mine face-velocity conditions.

The headgate and tailgate velocities observed by MSHA inspectors at 55 longwall MMUs were reviewed in 1999. The headgate and tailgate velocities ranged from 365 to 1,645 fpm and from 200 to 1,400 fpm, respectively. More importantly, headgate velocities at 60 percent of the MMUs exceeded 500 FPM and some 18 percent exceeded 800 fpm. Approximately 55 percent of tailgate velocities exceeded 500 fpm and 11 percent exceeded 800 fpm.

PAPRs have been demonstrated to be effective on longwall MMUs when air velocities do not exceed 500 fpm, but, as described above, there is evidence that their effectiveness is reduced when air velocities are increased. Therefore, given the range of observed longwall face air velocities to which miners are exposed and the proposed requirement that the verified ventilation plan demonstrate that the longwall shearer operator (occupation code—044) be at or below the applicable standard, MSHA is proposing to grant a protection factor of two for loose-fitting PAPRs used under this proposal. Multiplying either the respirable dust standard or the verification limit (whichever is applicable) by the protection factor yields the maximum concentration of respirable dust against which a particular type of respirator can be used. In other words, if MSHA permits a longwall operator to use PAPRs, then the maximum concentration of respirable coal mine dust and quartz dust against which these particular respirators can be used are 4.0 mg/m^3 and 200 $\mu g/m^3$, respectively. A complete respiratory protection program is required to assure that a respirator's protective value is not compromised by improper fitting or usage.

MSHA's determination is based on the best scientific and technical information available as well as sound engineering judgment. However we encourage you to submit comments on the protection factor. We are particularly interested in obtaining more recent data that may be available concerning protection factors as well as the conditions for the use of PAPRs. If you believe MSHA should establish a different protection factor, please submit these data supporting your position.

E. Guidelines for Determining What Is a Feasible Dust Control

The proposal would require a mine operator to implement all feasible engineering or environmental controls that are technologically and economically feasible. The Federal Mine Safety and Health Review Commission (Commission) has addressed the issue of what MSHA must consider, when determining what is a feasible control for enforcement purposes. In cases involving the noise standard for metal and nonmetal mines, the Commission has held that a control is feasible when it: (1) reduces exposure, (2) is economically achievable, and (3) is technologically achievable. See *Secretary of Labor* v. *Callanan Industries, Inc.,* 5 FMSHRC *19 00 (1983), and Secretary of Labor* v. *A. H. Smith*, 6 FMSHRC 199 (1984).

In determining technological feasibility of an engineering control, the Commission has ruled that a control is deemed achievable if through reasonable application of existing products, devices, or work methods with human skills and abilities, a workable engineering control can be applied to the exposure source. The control does not have to be ''off-the-shelf'' or already available but, it must have a realistic basis in present technical capabilities. Further, the Commission has held that MSHA must assess whether the cost of the control is disproportionate to the ''expected benefits,'' and whether the cost is so great that it is irrational to require its use to achieve those results. The Commission has expressly stated that cost-benefit analysis is unnecessary in order to determine whether an engineering control is feasible. According to the Commission, an engineering control may be feasible even though it fails to reduce the exposure to permissible levels in the standard, as long as there is a significant reduction in exposure.

Consistent with the Commission case law, MSHA would consider three factors in determining whether engineering or environmental controls are feasible at a particular mine: (1) the nature and extent of the overexposure; (2) the demonstrated effectiveness of available technology; and (3) whether the committed resources are disproportionate to the expected results. As explained in the discussion of proposed § 70.211 in Section IV of the

proposal, the formal determination of whether all feasible engineering or environmental controls have, in fact, been implemented at a specific mine to prevent excessive dust concentrations would be made by the Administrator for Coal Mine Safety and Health based on the best available information, experience, and engineering judgment.

F. Application of Continuous Monitoring Technology to Prevent Overexposures on Individual Shifts

Because approved technology that continuously monitors respirable dust and displays dust concentrations in real-time is not available, effective ventilation plans remain the only practical means to provide reasonable assurance, on a continuous basis, that miners are not overexposed on individual shifts. However, MSHA recognizes that person-wearable continuous respirable dust monitors under development may lead to significant improvements in monitoring the work environment in order to improve miner health protection. In an effort to reduce occupational respiratory disease among underground coal miners, MSHA encourages mine operators to adopt new and better dust monitoring technology as part of the approved ventilation plan.

Unlike the current monitoring system, which relies on periodic sampling and requires that corrective action be taken after the necessary delay in obtaining dust level information, continuous monitoring would allow mine operators and miners to be aware of the actual dust conditions at all times, thereby enabling immediate action to avert possible overexposure. The ability to monitor dust exposure continuously during the shift, predict end-of-shift cumulative exposures, and to display the actual end-of-shift exposure would be far more effective in preventing simple CWP and PMF than the current system.

The health benefits of continuous monitoring were clearly recognized by both the Task Group and the Advisory Committee. Both recommended development, field testing, and immediate deployment of such monitors for a variety of purposes. The Task Group concluded that continuous monitoring of the mine environment and dust control parameters offered the best long-term solution for improving the existing federal program designed to prevent simple CWP and PMF among coal miners. Similarly, the Advisory Committee stated in its report that:

> Worker exposure to excessive levels of dust can be prevented by implementing a hazard surveillance program that provides mine personnel with current information on actual dust levels in the work environment at all times, and on the status of key dust control parameters. The availability of this information on a real-time basis would enable mine personnel to focus attention immediately on the need to adjust control parameters to avert possible overexposure. The recent development of continuous dust and continuous dust control parameter monitors, which have both direct reading and data recording/processing capabilities, offers the potential to improve monitoring of the work environment significantly and contribute to the effective control of exposure. (MSHA, 1996).

MSHA has sought a means to measure the concentration of respirable coal mine dust in coal mines on a continuous basis for nearly two decades. Beginning in the 1970's, at the request of MSHA, the former U.S. Bureau of Mines funded several developments of fast-response, direct-readout respirable dust monitors for measuring the concentration of respirable dust.

One type of fast-response respirable dust monitor determined the mass of respirable dust particles collected on a grease-coated disk by the attenuation of beta radiation caused by the dust spot on the impaction disk. The unit was capable of operating for long periods, taking up to 450 1-minute samples, and printing the individual and time-integrated concentrations on a tape.

Other devices have used light-scattering technology to measure and provide an immediate direct readout of dust concentrations. Since light scattering is often dependent on particle characteristics such as size, surface properties, and refractive index, this type of dust monitor does not measure a mass concentration directly and can provide only a relative measurement. However, it can be calibrated in the laboratory to give an approximate mass concentration.

The light-scattering technology was later incorporated in a machine-mounted, continuous respirable dust monitor for use in underground mines. In the early 1980's, however, it was determined that this technology was not effective for monitoring compliance with the applicable dust standard. Nevertheless, instruments which used the light scattering principle were found to be useful tools to locate dust sources and to determine its magnitude. Such instruments continue to be especially useful for evaluating dust-control techniques such as dust collectors and water sprays that can be turned on and off quickly and repeatedly.

The 1992 Task Group report recommended the accelerated development of a fixed-site underground dust monitor, capable of providing continuous information on dust levels and personal sampling devices capable of providing both short-term and full-shift exposure measurements. In response to this recommendation, the former Bureau of Mines, with MSHA's assistance, again evaluated existing technology that could be used in the development of a fixed-site underground mine dust monitor. This was made possible because of advances in sensing and electronic signal processing technology that had occurred since development of the first generation machine-mounted dust monitor in the late 1970's. Eventually a fixed site/machine-mounted continuous respirable dust monitor based on the proprietary mass-measurement technology known as the tapered element oscillating microbalance (TEOM®) was developed and field tested.

The TEOM technique is capable of continuously weighing a filter upon which dust is collected. It provides a real-time record and a permanent record of the total mass collected on the filter. The device can display the time-weighted average (TWA) concentration of respirable coal mine dust (total mass of dust collected divided by the length of time the unit was operated), the instantaneous (real-time) concentration, and the projected full-shift concentration. This would allow a mine operator to adjust control measures or optimize mining procedures to prevent miner overexposure. The full-shift concentration of respirable coal mine dust would be available at the end of the shift. The developer of the fixed-site monitor is also working on a person-wearable, end of shift/continuous respirable dust monitor using the same TEOM technology.

In addition to the TEOM technology, NIOSH is developing another person-wearable device that has the potential for continuously monitoring the mine environment. This device measures the mass of respirable dust indirectly based on the amount of pressure drop detected across the collection filter.

MSHA is seeking ways to encourage voluntary deployment of this technology, once it has been verified as reliable. MSHA has considered allowing mine operators to adopt a continuous personal monitoring strategy as part of the approved ventilation plan, in lieu of plan verification. Under this approach, the operator would have the flexibility of choosing from several technologies available for continuous personal monitoring. If an operator adopts continuous personal monitoring, the following additional information, at a

minimum, would be required for the mine ventilation plan:

1. The specific continuous personal monitoring device the operator intends to use which has been approved by the Secretary;

2. The DO and other occupations or individuals, including part 90 miners, that will be sampled on every production shift and the length of the production shift to be sampled;

3. The procedures for preventing exposure above the applicable dust standard;

4. The manufacturer's calibration and maintenance requirements, and a description of how records of calibration and maintenance will be made available to MSHA, miners and the miner's representatives; and

5. A description of how end-of shift measurements will be recorded, who will certify that such records are accurate and properly taken, how long such records will be maintained, where such records will be made available for inspection by MSHA, miners and the miner's representatives, and how miners will be notified on each production shift of the end-of-shift measurements.

At the present time, we do not believe that technology to enable continuous monitoring of respirable dust has advanced to the point where it could be relied upon as an alternative to plan verification. In the future, when this technology is available, MSHA will consider the implementation of such an alternative to the proposed plan verification program. We request comments on this approach as a possible alternative to plan verification. MSHA is specifically interested in any proposals for the use of continuous personal monitoring, as well as any information which may be available concerning developing technology. Should an operator be interested in implementing a continuous personal monitoring program at a specific mine, MSHA will review the plan and consider development of a pilot program to develop information which may be useful for future rulemaking. MSHA is interested in comments concerning the specific provisions which should be included in the ventilation plan to assure that, if an operator does develop a continuous monitoring program, miners will not be overexposed on any individual shift.

IV. Discussion of Proposed Rule

A. Summary

As recommended by the Advisory Committee in 1996, MSHA is proposing to assume responsibility for all compliance sampling for respirable dust in underground coal mines as required under CFR parts 70 and 90. This proposal includes revocation of bimonthly compliance sampling requirements, abatement sampling requirements, the process for establishing a reduced standard when quartz is present, and operator sampling requirements for miners who have evidence of the development of pneumoconiosis under part 90. In order to provide a greater level of protection than that provided under these sampling requirements, MSHA is proposing to require each underground coal mine operator to have a verified mine ventilation plan. Under this proposal, MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit (MMU) in controlling respirable dust under typical mining conditions.

Mine ventilation plans have long been recognized as a means of addressing mine-specific health and safety issues. Existing § 75.370 requires that each mine operator design a ventilation plan to control methane and respirable dust in the mine. It further requires that the plan be suitable to the conditions and mining system at the mine. However, there is no current provision requiring the effectiveness of mine ventilation plans to be verified under typical mining conditions.

Since 1970, beginning with enforcement of the Federal Coal Mine Health and Safety Act of 1969, the level of respirable dust in underground coal mines has been significantly reduced. Although much progress has been made, MSHA sampling data indicate that some work environments continue to have excessive concentrations of respirable dust. It is MSHA's position that excessive dust levels can be substantially reduced, if not eliminated, by implementing the Advisory Committee's recommendations to enhance plan quality and strengthen the plan approval process. Toward this end, this proposal would revise 30 CFR by revising part 70, subparts A, B, and C amending two existing sections of part 75.

This proposal would require evidence that the mine ventilation plan is effective in controlling respirable dust as required by § 75.370. Within the first 30 days of operating a new MMU, or when required to do so by the District Manager, mine operators would have to specify the operating parameters of an effective plan and then MSHA would verify the plan's effectiveness based on a sufficient number of full-shift samples taken at designated locations.

Under this proposal, we would collect full-shift respirable dust samples, called ''verification samples,'' to demonstrate the adequacy of the dust control parameters specified in the mine ventilation plan in maintaining the concentration of respirable coal mine and quartz dust at or below 2.0 mg/m^3 and 100 μg/m^3, respectively.

For purposes of plan verification, ''full-shift'' would refer to the entire work shift during which material is produced by an MMU. Currently, many mining operations have work shifts of more than 8 hours. Miners working extended shifts should be protected from the hazards of respirable dust and quartz by the ventilation plan. Accordingly, the proposed verification samples would not be limited to 8 hours or less, as under the current bimonthly operator sampling regulations.

A sample would be valid for verification purposes only if the shift on which it was taken met certain requirements. This is necessary in order to verify that dust controls specified in the plan are sufficient to prevent excessive dust concentrations, even when a higher-than-average amount of material is produced. The proposed operator's requirements for a shift used for verification sampling are:

(1) The dust controls and work practices utilized must be those listed in the mine ventilation plan;

(2) MSHA's measurements of the engineering or environmental control parameters must not exceed 115% of the quantities specified in the plan; and

(3) The amount of material produced must be at least the ''verification production level'' or VPL.

The VPL is defined as the tenth highest production level recorded in the most recent 30 production shifts.

The proposed rule would require mine operators to: (1) Set and maintain the dust control parameters during MSHA verification sampling at levels specified in the plan; (2) maintain and make available to MSHA records of the amount of material produced by each mechanized mining unit during each production shift; and (3) provide additional information in mine ventilation plans.

The number of samples necessary to verify that the dust control parameters proposed for an MMU are effective would depend on the individual sample. Since all such measurements are subject to potential sampling and analytical errors, some of them may fall slightly below the verification limit even when the true concentration of respirable coal mine dust or quartz does not. Therefore, to ensure that the verification limits have actually been met, it is necessary to provide for a margin of error in each measurement.

The ''critical values'' established by MSHA provide this margin of error. If the VPL is achieved and dust concentrations are sufficiently low, the District Manager could approve a plan based on as few as one shift of sampling. However, if dust concentration measurements are higher, or if the actual production was less than the VPL MSHA would sample additional shifts.

Consistent with the Mine Act and its implementing regulations, MSHA's longstanding policy has been to preserve the primacy of engineering controls, to the extent that they are technologically and economically feasible. Consequently, MSHA has not accepted the use of approved respiratory protection or administrative controls as a means of achieving compliance with the respirable dust standard. In order to provide all miners with the highest possible level of health protection, as intended by the Mine Act, MSHA is now proposing to permit the use of approved PAPRs or verifiable administrative controls to supplement engineering or environmental controls under certain circumstances for compliance purposes. Their use would be limited to longwall mining operations and permitted only after MSHA has determined, upon request of the operator, that all feasible engineering or environmental controls cannot maintain the mine atmosphere within applicable standards. In such cases, specific requirements governing the use of PAPRs or verifiable administrative controls would be specified in the mine ventilation plan.

Finally, the proposal would require you to maintain, and make available to MSHA inspectors, records of the amount of material produced by each MMU during each production shift over a running six-month period. This, along with routine bimonthly and other sampling data, would enable us to review the suitability of the plan parameters on an ongoing basis.

Although a VPL would be included in the ventilation plan, we would not cite you for producing at levels exceeding the VPL. We would expect production on an MMU to exceed the VPL on about 33 percent of all production shifts. If the District Manager determines that your production exceeds the VPL on more than about 33 percent of the production shifts over a six-month period, then this may trigger the plan verification process using a higher VPL.

These and other provisions of the proposed rule are explained in more detail in the following section-by-section discussion.

B. Section-by-Section Discussion

This section of the preamble explains, section-by-section, the provisions of the proposed rule. The text of the proposed rule is included at the end of the document.

Section 70.2 Definitions

The existing definitions of certified person, concentration, and designated area (DA) are being modified to more clearly convey the intended meaning under the proposal. These modifications reflect necessary changes as a result of the removal of existing paragraphs and the transfer of other paragraphs, as well as the addition of new references. The proposal also includes definitions of new terms to clarify the mine ventilation plan verification process as it applies to mechanized mining units (MMUs). Some of the definitions are for technical terms developed specifically for this proposal, such as ''verification limit'' and ''verification production level.'' Finally, the definitions of ''certified person,'' ''normal production shift,'' and ''valid respirable dust sample'' would be removed.

We explain these new and revised definitions of terms below. You should also closely examine each proposed section where the term is used to review the context in which it is used.

The following existing definitions are being modified:

Concentration

The existing definition would be modified so that ''concentration'' refers to an 8-hour Mining Research Establishment (MRE) equivalent measure of the amount of sampled material contained per unit volume of air. The proposed revision would include the constant factor of 1.38 which the Secretary currently uses to convert concentration of respirable dust measured with approved sampling devices to an equivalent concentration as measured with an MRE instrument.

MSHA developed the existing coal mine dust standards from 8-hour shift exposure measurements. Therefore, if you take a sample over a period other than eight hours, you must adjust the concentration measurement to be equivalent to an eight-hour exposure. This will protect miners working shifts longer than eight hours, and would be accomplished by multiplying the sampler flow rate by 480 minutes, regardless of the length of time during which the sample was actually collected. (In these examples, to determine equivalent concentrations of respirable coal mine dust: MRE equivalent concentration (mg/m^3)=

$$\left(\frac{\text{accumulated dust (mg)}}{\text{sampling time (min)} * \text{rate of sampling}\left(\text{m}^3\right)}\right) * 1.38$$

where: rate of sampling = 0.002 m^3/min).

For example, suppose a DO sample is collected over a 9-hour shift that includes one hour of travel time. Suppose that the amount of dust accumulated during travel is negligible, and the amount of dust accumulated during production is 1.5 mg. If the concentration were not adjusted to an 8-hour equivalent, it would be diluted by the time spent traveling and calculated as 1.92 mg/m^3. Under the proposed definition, the calculated concentration would be 2.16 mg/m^3.

The proposed definition does not change the daily limit on accumulated exposure intended by the existing exposure limit for coal mine dust. Since the current limit was based on an assumption that exposure occurs over an 8-hour shift, it corresponds to a daily cumulative exposure limit of $8 \times 2.0 =$ 16 mg-hr/m^3. The proposed definition of concentration would maintain this same MRE-equivalent 16 mg-hr/m^3 daily limit, regardless of the length of any shift worked.

To continue the example, the exposure accumulated during a day is the same, whether from 8 hours at an average of 2.16 mg/m^3 or from 9 hours at an average of 1.92 mg/m^3. In either case, the MRE-equivalent exposure accumulated for the day is 17.3 mg-hr/m^3, which exceeds the intended daily limit of 16 mg-hr/m^3. Under the proposed definition, this would be reflected by the fact that the calculated concentration exceeds 2.0 mg/m^3. MSHA solicits comments on this method of adjusting concentrations to an 8-hour equivalent.

Designated Area (DA)

The existing definition would be modified to permit the Secretary to identify designated areas and to remain consistent with existing procedures which have been in effect since 1980. Once identified, the location of these DAs and the respirable dust measures to be used at the dust generating sources for these locations must be contained in the operator's mine ventilation plan as provided for under § 75.371(t). However, the operator would not be required to sample these DA's under the proposal. MSHA is also proposing to transfer the requirement for identifying each DA specified in existing § 70.208(e), which will be removed, to revised § 70.2(e).

Mechanized Mining Unit (MMU)

The existing definition would be modified by removing § 70.207(e) (Bimonthly sampling; mechanized mining units) which will be deleted, and revising § 70.207; and by transferring the requirements for identifying each MMU specified in existing §§ 70.207(f)(1) and (f)(2), to revised § 70.2(o).

Quartz

The existing definition of quartz would be modified by specifying the analytical method that MSHA has been using since 1983 to determine the quartz content of respirable dust samples. The reason for this modification is to standardize the procedure, thereby enabling other laboratories to reproduce quartz determinations made by MSHA.

The following new definitions are being proposed:

Critical Value

''Critical value'' would mean the maximum acceptable full shift dust concentration measurement demonstrating that the applicable verification limit has been met at a high level of confidence. Appendix A explains how each critical value was derived. The specific critical values and their use are detailed in §§ 70.209 and 70.213.

Dust Control Parameters

''Dust control parameters'' would mean the respirable dust control requirements of a mine ventilation plan, including engineering or environmental controls, maintenance procedures, and any other requirements described in a ventilation plan. These requirements are intended for the protection of miners from excessive levels of respirable dust and must be in place on every production shift. To assure compliance with the ventilation plan, you must check the dust control parameters on each MMU before beginning production, as required under § 75.362(a)(2). This term has not been formally defined until now.

Engineering or Environmental Controls

''Engineering or environmental controls'' would mean all methods that control the level of respirable dust in the work environment by either reducing dust generation or by suppressing, diluting, capturing or diverting the dust being generated during the mining process. Throughout the proposal, the terms ''engineering'' and ''environmental'' controls are used interchangeably. The Racal® Airstream helmet (or the 3M™ Airstream™ Helmet-Mounted PAPR), or any other respiratory protective device approved and labeled as such by the National Institute for Occupational Safety and Health (NIOSH), is not defined as an engineering or environmental control.

Full Shift

''Full shift'' is defined differently for purposes of plan verification and abatement sampling, and for bimonthly compliance determinations. For purposes of abatement and plan verification, ''full shift'' would mean an entire work shift, including travel time to and from the MMU. Because of the way MSHA intends to define ''concentration,'' this would be equally protective regardless of the production and travel times. For example, suppose miners at one MMU travel for one hour and mine for eight hours. Miners at another travel for two hours and also mine for eight hours. Suppose, further, that the dust concentration during travel is negligible and that the dust concentrations are identical during production at the two MMUs. Then the amount of dust accumulated on a filter will be the same, say 1.0 mg, in both cases. Applying the proposed definition, the dust concentration calculated for both MMUs would be 1.44 mg/m^3.

For purposes of bimonthly compliance determination, MSHA would continue its current practice of limiting sampling to a 480-minute maximum. MSHA solicits comments on whether ''full shift'' for compliance sampling purposes should be defined in the same way as for abatement and plan verification purposes. MSHA also solicits comments on whether ''full shift'' should be defined, as proposed, in the same way for abatement and plan verification purposes.

Material Produced

''Material produced'' would mean the total amount of coal and/or other substance extracted by an MMU during any production shift. In order to properly assess the effectiveness of the mine ventilation plan requirements for respirable dust control and for subsequent monitoring purposes, MSHA proposes to require that the operator record and make available records of the amount of material produced by each MMU each shift under a new paragraph (h) of § 75.370.

MRE

''MRE'' would mean Mining Research Establishment of the National Coal Board, London, England.

Powered Air-Purifying Respirators (PAPRs)

''Powered, air-purifying respirators (PAPR)'' would mean a NIOSH approved loose-fitting respirator that uses a blower to force the ambient air through air-purifying elements to deliver filtered air to the miner's breathing area. Under the proposal, an operator who employs longwall mining has the option of using either powered, air-purifying respirators (PAPRs) or verifiable administrative controls as a supplemental means of control once MSHA has determined that concentrations of respirable dust have been reduced as low as is feasible with engineering and environmental controls. This may include RACAL® Airstream helmets or similar devices that are available now or in the future. The reason for excluding other types of approved respirators is discussed in section II.B.1.

Verifiable Administrative Control

''Verifiable administrative control'' would mean a work practice intended to reduce the miner's full shift exposure to respirable dust hazards by altering the way in which work is performed. Examples include rotation of miners to areas having lower concentrations of respirable dust, rescheduling of tasks, and modifying work activities to reduce exposure. A ''verifiable administrative control'' must be (1) capable of review to confirm proper implementation; (2) clearly understood by miners; and (3) applied consistently over time.

Verification Limits

''Verification limits'' would mean the maximum dust concentration for which the ventilation plan has been verified as effective in maintaining during the full shift. There are two separate verification limits: An MRE-equivalent concentration of 2.0 mg/m^3 for respirable coal mine dust and an MRE-equivalent concentration of 100 μg/m^3 for respirable quartz dust. Both of these

limits apply to dust concentrations measured over a full shift.

MSHA does not enforce a separate standard for quartz dust. It regulates exposures to quartz and coal mine dust by reducing the applicable standard for coal mine dust, by means of a formula, when quartz content of the respirable dust is above 5 percent. This formula (10 divided by the concentration of quartz, expressed as a percentage) establishes an applicable coal mine dust standard that, in effect, limits quartz concentrations in the mine environment to no more than 100 μg/m³. For example, when the quartz content is 5 percent, the applicable standard is 2.0 mg/m³; when the quartz content is 10 percent, the applicable standard is 1.0 mg/m³. Five percent of 2.0 mg/m³ and 10 percent of 1.0 mg/m³ are each 0.100 mg/m³ or 100 μg/m³.

The Advisory Committee recognized that a significant quartz exposure hazard continues to exist in coal mines, especially for operations such as roof bolting. Based on MSHA data, 66 percent of underground coal mines are operating on a reduced dust standard due to the respirable dust in the mine environment containing a high percentage of quartz. MSHA data also indicates that 73 percent of the over 600 roof bolters and over 29 percent of the MMUs sampled bimonthly by mine operators are operating under reduced dust standards. The number of reduced standards in effect indicates that a significant potential health risk due to quartz exposure continues to exist. Under the current program, miners can be exposed to excessive quartz levels while the dust standard-setting process takes place. For example, consider a recent situation where an MSHA dust sample of a roof bolter was 0.9 mg/m³; a level that was in compliance with the applicable standard, 1.3 mg/m³. However, when the sample was analyzed for quartz the results indicated that the actual concentration of quartz dust in the mine environment exceeded 270 μg/m³; or more than two and a half times above the permissible level of 100 μg/m³. The only action that could be taken in this particular situation was to initiate the dust standard-setting process, which, on average, can take at least one month or longer. The existing standard-setting process continues from the time the operator is cited for violating the reduced standard through the time MSHA enforces final corrective action.

Under this proposal, MSHA would require operators to anticipate the potential for quartz exposure and to incorporate controls prior to approval of the mine ventilation plan. In order to verify that the operator has incorporated such controls, MSHA would determine the mass of quartz contained in each verification sample and express the concentration of quartz in the mine air as an airborne concentration and not as percent quartz in the dust during the verification process.

This process would require operators to address both the potential for respirable coal mine dust and quartz dust exposure. As recommended by the Advisory Committee, the proposed plan verification process would establish a monitoring and compliance framework to aid MSHA and the coal mine operator in targeting mining situations where quartz exposure constitutes a significant hazard and enhanced dust control procedures are required.

Verification Production Level (VPL)

The ''VPL'' would mean the tenth highest production level recorded in the most recent 30 production shifts. It is an estimate of the 67th production percentile within an MMU. (§ 70.208 explains how to establish the VPL if you do not have records for 30 production shifts.)

We believe that the production criteria used to evaluate plan effectiveness may not adequately represent typical conditions under which miners work. Requiring that plans be verified at or above this VPL would provide assurance that excessive dust concentrations would be avoided on a majority of production shifts. MSHA believes that using this VPL is more protective of miners' health than the current practice of evaluating plan adequacy based on MSHA inspector samples taken when production can be as low as 60 percent of the average production. We note however, that a VPL defined as a higher production percentile than is being proposed would likely assure that miners would be more protected on a majority of production shifts. The Agency welcomes comments on both the use of a VPL and the appropriate production percentile to use to define it.

Since approximately 50 percent of all production shifts are expected to exceed average production, it follows that the vast majority of all production shifts exceed 60 percent of average production. Therefore, by using 60 percent of average production as the lower range of the production criteria for plan evaluation purposes, as required under current inspection procedures, we have no assurance that the plan would be effective under the vast majority of production conditions.

If you do not have records for 30 production shifts, you can use the minimum production actually achieved on a shift used to verify the plan's effectiveness as your VPL.

Verification Sample

''Verification sample'' would mean a sample collected for purposes of plan verification. In order to be valid the sample must be collected on a full shift during which the amount of material produced is at or above the VPL. Only those engineering or environmental controls and other measures listed in the mine ventilation plan may be employed, at levels not exceeding 115% of the quantities specified in the plan during the shift in which the sample is collected. For example, if the plan specifies an air quantity of 4,000 cfm, the quantity measured during verification must not exceed 4,600 cfm (4,000 cfm x 1.15 = 4,600).

Section 70.100 What are the respirable dust standards when quartz is not present?

MSHA is proposing no substantive changes to existing § 70.100(a) and (b), except for removing the reference to § 70.206 (Approved sampling devices; equivalent concentrations) from existing paragraphs (a) and (b) and replacing it with revised § 70.2(c). The requirements of revised § 70.2(c) are similar to the previous standard in § 70.206. The proposal retains the respirable dust standard of 2.0 mg/m³ in existing paragraph (a) and the intake air standard for respirable dust of 1.0 mg/m³ in existing paragraph (b).

Section 70.101 What is the respirable dust standard when quartz is present?

MSHA is proposing to retain the existing formula (10 divided by the concentration of quartz, expressed as a percentage) for reducing the respirable dust standard below 2.0 mg/m³ when the quartz content of the respirable dust in the mine atmosphere is above 5 percent. However, the Agency is proposing to change how it arrives at an average quartz percentage that is used to establish an applicable dust standard.

MSHA recently published a proposed ''Program Policy Letter (PPL) on Samples Used to Determine the Respirable Dust Level When Quartz is Present'' for public comment [64 FR 65671, November 23, 1999] whereby the standard would be determined based solely on the results of multiple MSHA samples. Under this proposal, as in the PPL, MSHA would no longer be using a combination of MSHA and mine operator sampling for determining the average quartz percentage, which has been the practice since 1985. Instead, as discussed in section III.B, this proposal

would establish MSHA sampling as the exclusive basis for determining the reduced standard and require three valid MSHA samples to set a reduced standard. Since we are sampling underground mines bimonthly, we will have no difficulty in collecting the required number of samples to arrive at the average quartz percentage. We believe our samples will be more representative of the level of quartz to which miners are exposed than as determined currently. This increased level of sampling should also allay any operator concerns regarding the collection of ''misleadingly high'' samples during atypical periods. We would also begin reporting quartz levels to the nearest tenth of a percent. This is intended to be more protective for the miner than under the current program of truncating results to the nearest full percent. We believe that the method for establishing reduced standards will be more protective for the miners than the current program.

Verification of Ventilation Plan Effectiveness.

Existing § 75.370 requires you to develop an underground coal mine ventilation plan that is designed to control methane and respirable dust in the mine. It further requires that the plan be suitable to the conditions and mining systems at the mine. Proposed §§ 70.201 to 70.211 sets forth the steps that MSHA will follow to demonstrate that your mine ventilation plan required by § 75.370 is effective in controlling respirable dust under typical mining conditions. This demonstration would be required before MSHA approves the mine ventilation plan.

Under §§ 70.201 to 70.211, MSHA would verify the effectiveness, for the control of respirable dust, of all mine ventilation plans submitted to the District Manager for approval under § 75.370. To do this, MSHA would collect full shift samples, called ''verification samples.'' For MSHA to approve the plan, these samples would have to demonstrate that the plan's dust control parameters are effective in maintaining concentrations of respirable coal mine dust and quartz dust in the working environment of MMUs at or below 2.0 mg/m^3 and 100 μg/m^3, respectively, under typical mining conditions.

MSHA has drafted the regulatory text of this proposal in a question and answer format. The remainder of the Section-by-Section discussion also follows this format. As discussed in Chapter IV paragraph A below, we request your comments on this format.

Section 70.201 Who must have a verified ventilation plan?

Section 75.370 requires all underground coal mine operators to submit a mine ventilation plan for approval. The proposed § 70.201 would require the verification of these plans in terms of their effectiveness in controlling dust.

Section 70.202 What is a verified ventilation plan?

A ventilation plan submitted under § 75.370 must be designed to control respirable dust and must be suitable to the conditions and mining systems at the mine. In order for the plan to be verified under this proposal, the plan's dust control parameters must be demonstrated to be effective, at a high level of confidence, in maintaining the concentration of respirable coal mine dust and quartz dust in each MMU at or below 2.0 mg/m^3 and 100 μg/m^3, respectively. This demonstration would be based on MSHA full shift verification samples, which are collected when the amount of material produced is at or above the VPL and only the engineering or environmental controls and other measures included in the ventilation plan are in place, at levels not exceeding 115% of the quantities specified in the plan.

Section 70.203 What will trigger the plan verification process?

There are several ways in which the plan verification process could be initiated. You would trigger the process by submitting a new ventilation plan under § 75.370, or amending a previously approved ventilation plan under § 75.371(f). The verification process could also be triggered if the District Manager requires you to change your plan after determining that your dust control parameters are no longer effective. Finally the verification process could be triggered if you propose revisions to a previously verified ventilation plan and the District Manager determines that the proposed revisions may cause the plan to be inadequate.

Once your ventilation plan has been verified as effective, it should not be necessary to reverify your plan every six months. However, you may be required to change your plan parameters based on (1) results of the MSHA six-month review of the ventilation plan as required by § 75.370(g), (2) excessive dust concentrations measured by MSHA sampling, or (3) a new reduced applicable dust standard which is less than the highest respirable coal mine dust concentration that was previously used to verify the plan. For example, if you are cited by MSHA for exceeding the applicable dust standard the District Manager may have cause to question the adequacy of the previously-approved plan.

Also, depending on sampling results and production records, if your production exceeds the VPL during MSHA sampling, the District Manager may require you to verify the ventilation plan at the higher production level. For example, suppose your VPL is 10,000 tons and all five MSHA concentration measurements exceed the applicable standard on a shift for which the production is 12,000 tons. Then, if your production records indicate that you have exceeded the VPL on more than 33 percent of all production shifts during the previous six months, MSHA would initiate the verification process.

Section 70.204 When will MSHA conduct verification sampling?

The District Manager will notify you of the schedule for verification sampling after granting provisional approval of your ventilation plan. However, before you receive provisional approval, you may be required to change your plan if the District Manager determines that your dust control parameters are inadequate or unsuitable for the current mining conditions. If provisional approval is not granted, you may not operate the affected MMUs. Since more than 700 existing mine ventilation plans may require verification, MSHA will not be able to verify all plans immediately. Under proposed § 70.204 the District Manager would notify you of the date when MSHA intends to collect verification samples.

Section 70.205 What must I (the operator) do to comply this standard?

When the District Manager notifies you that your mine has been scheduled for verification sampling, you would need to make sure that all the dust control parameters specified in your ventilation plan are fully implemented. Since the objective of plan verification is to determine the effectiveness of the plan's dust control parameters in controlling respirable dust under typical mining conditions, paragraph (a) would require you to utilize only the dust control parameters listed in the ventilation plan that was provisionally approved by the District Manager. On the date scheduled for verification sampling, you should establish production levels at or above the VPL specified in the plan, using only the dust control parameters and other measures listed in the plan.

Recognizing that engineering or environmental controls such as air quantity and velocity are subject to measurement error and cannot easily be controlled with absolute precision, MSHA would allow the measured levels to be up to 115% of the levels specified in the plan. If, on the date of verification sampling, a measured quantity exceeds the corresponding quantity specified in the plan by more than 15 percent, you will have the option to either (1) adjust the parameter(s) to what is specified in the plan before verification sampling begins or (2) make no adjustment to the parameter(s) prior to verification sampling. Under the second option, plan approval will be contingent on incorporating into your plan the maximum values of parameters in effect during verification sampling. If verification samples were taken when a parameter measurement exceeded 115 percent of the level specified in the plan, then (assuming none of the verification samples exceeded the critical values) that parameter quantity, as measured, would be incorporated in the plan ultimately approved by the District Manager.

As of the effective date of the final rule, you would be required to begin maintaining records of the amount of material produced by each MMU during each shift. This would enable you to establish the ''verification production level'' (VPL)—the minimum production level at which you must demonstrate the plan's effectiveness.

Before you submit a previously approved ventilation plan to the District Manager for review and approval, proposed paragraph (c) would require you to provide additional information. This additional information is described under § 75.371(f) of this proposal.

To enable us to maximize our inspection resources and to promote an orderly verification process, proposed paragraph (d) would require you to notify the District Manager in a timely manner if you are unable to meet the conditions for verification sampling on the scheduled date. Failure to provide notification may be cause for revocation of the provisional approval of your ventilation plan.

In accordance with section 103(f) of the Mine Act and the recommendations of the Advisory Committee, miners and their representatives would be provided the same walkaround rights during plan verification sampling as they are provided during any other physical inspection made pursuant to the provisions of section 103(a) by an authorized representative of MSHA.

MSHA believes that under the guidance of the Interpretive Bulletin (43 FR 17546, April 25, 1978) these rights arise when: (1) An ''inspection'' is made for the purposes set forth in section 103(a), and (2) the inspector is physically present at the mine to observe or monitor safety and health conditions as part of direct safety and health enforcement activity.

The process of plan verification sampling is necessary to obtain information related to approval of the mine's ventilation plan and whether coal mine dust will be adequately controlled to protect miners health. Consequently, miners and their representative would have the right to accompany the inspector with no loss of pay for the time during which the representative exercises this right. However, this right is limited by Section 103(f) to only one such representative of miners.

Section 70.206 Who will MSHA sample and where will MSHA place the sampling device(s) when conducting verification sampling?

MSHA will sample specific occupations within an MMU to demonstrate your plan's adequacy. These occupations would be selected because, based on past experience, within an MMU they would likely be exposed to the highest respirable coal mine dust concentration and, therefore, would be at greatest risk of overexposure. Therefore, MSHA would sample the environment of the DO (as under existing § 70.207), the roof bolter operator(s) (occupation codes—012, 014 or 046), the longwall jack setters (occupation code—041), and any other occupation that the District Manager may designate for sampling after reviewing your ventilation plan.

Section 70.207 How many shifts will MSHA sample to verify my ventilation plan?

This proposed section would explain that the number of shifts required to verify your ventilation plan would depend on two factors: first, the actual operating conditions during the shift that is sampled; and, second, the sample results. To qualify as a verification sample, the amount of material produced by the MMU must equal or exceed the VPL, and the dust control parameters must be at levels not exceeding 115 percent of the quantities specified in the plan. Therefore, the number of shifts depends largely on how quickly and consistently you are able to achieve these operating conditions. We may need to sample several production shifts before the production level on any single shift qualifies for verification purposes. We may verify the plan based on this single shift—but only if all concentration measurements on the sampled shift are at or below the appropriate critical values proposed in § 70.209. This would demonstrate the plan's effectiveness at a high level of confidence. If any of the measurements exceed the appropriate critical value, then we would collect verification samples taken on one to three additional shifts, depending on the concentrations measured on those shifts. Since these additional shifts must also meet the criteria for production, and use only the engineering or environmental controls and other measures specified in the ventilation plan, we may have to sample a total of more than four shifts.

Assuming that you make no special effort to meet the VPL during verification sampling, there is a 67-percent probability that a randomly selected production shift would not meet the VPL. Consequently, if you made no special production effort, there would be a 13-percent chance we would need to sample more than five shifts and a 1.7-percent chance we would have to sample more than 10 shifts. [8] On the other hand, again assuming no special production effort, there would be a 98-percent chance we would need 10 or fewer shifts and a 70-percent chance that we would need three or fewer shifts. [9] This assumes that the dust concentration measurement for each shift does not exceed the critical value corresponding to the number of shifts sampled. If you make a special effort to achieve high production on the sampled shifts, then fewer shifts would be required.

Section 70.208 What if 30 shifts of production data are not to establish the verification production level (VPL)?

If you are starting a new MMU or mine, you may not have 30 shifts of production data available when you submit a new ventilation plan. In such cases, proposed § 70.208 requires you to establish the VPL as the minimum production level actually achieved on a shift used to verify the plan's effectiveness. For example, assume we initiate verification sampling of your longwall MMU. Based on the dust

[8] Assuming no special production effort, the probability of needing more than n shifts to be sampled before you met the minimum production level required to verify the plan: $P(X>n) = (.667)^{n}$; for example, the probability of more than 10 shifts being needed, $P(X>10) = (.667)^{10} = 1.7$ percent.

[9] Assuming no special production effort, the probability of needing n or fewer shifts to be sampled before you met the minimum production level required to verify a plan: $P(X\leq n)=1-P(X\geq n)$; for example, the probability of 10 or fewer shifts being needed, $(1-(.667)^{10}) = 98$ percent.

concentration measurements obtained on the first shift sampled, your MMU happens to exceed either 1.85 mg/m³ for respirable coal mine dust or 93 μg/m³ for quartz dust but not the verification limits. According to the applicable critical values table in § 70.209, we would need to sample at least two more shifts to verify your plan's effectiveness, provided that no sample exceed 1.93 mg/m³ for respirable coal mine dust or 97 μg/m³ for quartz dust. Assume that the highest production level was achieved on the third shift sampled and the dust concentration measurements obtained on that shift were low enough, according to the applicable critical values table in § 70.209, to verify plan effectiveness based on a single shift. In this case, you would establish a VPL equal to the production achieved on that shift. If, on the other hand, the dust concentration measurements obtained on the third shift with the highest production level were not low enough to verify the plan on a single shift and a determination of the plan's adequacy was based on these three shifts, your VPL would be the minimum production achieved during verification sampling. In any case, the VPL would become part of your ventilation plan.

Section 70.209 When will MSHA approve my ventilation plan?

This is a new section that proposes ''critical values'' that the District Manager would use to determine whether your plan's dust control provisions should be approved. These critical values, which differ according to the number of shifts used for verification, are listed in Table IV–1. When verification sample results do not exceed the appropriate critical value for respirable coal mine dust or quartz dust, we can be confident that the engineering or environmental controls in place during verification sampling successfully prevented excessive dust concentrations at the sampled locations. Therefore, MSHA would approve your plan when the dust control parameters are in place during verification sampling and none of the measurements obtained from your verification samples exceeded the appropriate critical value. Appendix A explains how the critical values were derived.

TABLE IV–1.—CRITICAL VALUES FOR VERIFYING PLAN EFFECTIVENESS. THE RESULT OF EACH VERIFICATION SAMPLE COLLECTED MUST BE LESS THAN OR EQUAL TO THE APPROPRIATE CRITICAL VALUE

Number of shifts meeting criteria for verification sampling	Critical value for coal mine dust (mg/m³)	Critical value for quartz dust (μg/m³)
1	1.71	87
2	1.85	93
3	1.93	97
4 or more	2.0	100

The proposed approval process would allow the District Manager to base verification sampling on a reasonably small number of shifts, while maintaining a high level of confidence that approved ventilation plans adequately prevent excessive dust concentrations. We would have to sample at least one full shift under the operating conditions specified in the mine ventilation plan before we could make any determination of the plan's adequacy. The plan would be approved if all samples on that shift meet the criteria for a verification sample as defined in § 70.2, and none of the sample results exceed the appropriate critical value for a single shift listed in Table IV–1. However, if any verification sample resulted in a coal mine dust measurement greater than 1.71 mg/m³ or a quartz dust measurement greater than 87 μg/m³, samples would be taken on additional shifts.

The following two examples illustrate how we would determine if your plan's dust control provisions should be approved:

Example 1: Suppose samples were taken on two shifts. We would approve the dust control provisions of your plan if all quartz and coal mine dust measurements obtained on the two shifts were less than 1.85 mg/m³ or 93 μg/m³, respectively. On the other hand, if one of the roof bolter samples resulted in a quartz concentration measurement of 95 μg/m³, then we would not approve your plan, based on these two shifts alone. Instead, at least one additional shift would be needed. Verification samples from only one additional shift would be sufficient if none of the coal mine dust measurements on that shift exceeded 1.93 mg/m³, and none of the quartz measurements exceeded 97 μg/m³. (Dust control parameters and production on this additional shift, as well as on the first two shifts, would need to meet the criteria for verification samples in proposed § 70.2 (bb).)

Example 2: Suppose verification samples were taken on four or more shifts. We would approve the dust control provisions as proposed if no measurement exceeded 2.0 mg/m³ of coal mine dust or 100 μg/m³ of quartz dust.

Section 70.210 What must I (the operator) do if one or more verification samples exceed either verification limit?

This is a new section that would require you to take certain actions whenever a verification sample results in a measurement exceeding the verification limit for either respirable coal mine dust (2.0 mg/m³) or quartz dust (100 μg/m³). You would be required to immediately identify the cause of the high dust concentration and prevent miners from being overexposed on subsequent shifts.

When you receive notice from MSHA that you have exceeded either verification limit, you must immediately take corrective action. You must lower excessive respirable dust concentrations, so that none of your full shift measurements exceed verification limits in any of the identified occupational environments or sampling locations. At the same time, you must make approved respiratory equipment available to affected miners in accordance with § 70.300.

You would also be required to document the corrective actions taken for the District Manager, within five days of MSHA's notification that you have exceeded a verification limit. This documentation must describe all of your corrective actions, including proposed changes in dust control parameters. You would be encouraged to seek technical assistance from the District Manager to help you determine what additional corrective measures would be reasonably likely to reduce excessive dust concentrations.

The District Manager will notify you if your ventilation plan is provisionally approved and when MSHA will again commence verification sampling. The District Manager may require you to make additional changes in your plan parameter(s) based on the results of verification sampling before starting sampling over again. If no changes are required, MSHA will continue

verification sampling from the point at which it stopped.

The District Manager would choose, on a case-by-case basis, between resuming verification sampling or starting plan verification anew. MSHA would not necessarily require a revision of the ventilation plan nor start the ventilation verification process over again because a verification sample exceeded the verification limit by a small amount, such as 0.05 mg/m^3. The decision to continue with your current ventilation plan or start over again with a new ventilation plan, would be based on the information you provide regarding the cause of any excessive dust concentration measurements and the steps you have taken to prevent similar occurrences in the future. For example, suppose dust concentration measurements are excessive due to a deviation in your established operating procedures. It should be possible for you to prevent such occurrences in the future without changing the ventilation plan. If the District Manager finds this to be the case, and accepts your proposed action to prevent similar occurrences, MSHA would resume verification sampling. However, the District Manager may determine that the ventilation plan is not adequate for current operating conditions and require you to change the plan parameters. If so, MSHA would start the verification sampling process over again.

MSHA would not issue citations for exceeding verification limits during the plan verification process. However, MSHA will issue citations under proposed § 70.210(a) for failure to take action required to address the cause of the excessive dust levels once you have been notified by MSHA.

Section 70.211 What if verification samples continue to exceed either verification limit even though I (the operator) believe all feasible engineering and environmental controls are in place?

This proposed section would continue to require you to use all feasible engineering or environmental controls before implementing any supplemental means of control at longwall mining operations. For continuous and conventional mining operations MSHA would suggest additional engineering and environmental controls. Even if these controls do not prevent full shift respirable dust concentrations from exceeding the verification limits, you must continue to use them to reduce respirable dust to the lowest feasible level. Engineering or environmental controls have been the primary form of dust control for the past 30 years. The Advisory Committee recommended that engineering or environmental controls remain the primary means of protecting coal miners. Consistent with the Mine Act and the Advisory Committee's recommendation, under this proposal engineering or environmental controls continue to be recognized the primary means to control exposure to respirable dust.

If you operate an MMU employing either a continuous or conventional mining method, we believe feasible engineering or environmental controls are available to control respirable dust to an acceptable level. Controls include better design of water spray systems for dust suppression and air movement, use of dust collectors, and improved face ventilation systems.

Of approximately 800 continuous miner MMUs operating in over 500 underground mines, over 90 percent employ extended cut techniques and are being operated remotely (Elam, August 1999). As a result, the continuous miner operator, the occupation normally identified as the DO for bimonthly sampling purposes, is no longer required to work close to the face area where material is being extracted.

Roof bolting machines, a major generator of respirable quartz dust on continuous miner MMUs, must be equipped with suitable drill dust controls. Under § 72.630, drill dust must be controlled by permissible dust collectors, by water, water with a wetting agent, by ventilation, or by any other method approved by MSHA.

These and other approaches, as well as results of laboratory and field studies of the effectiveness of various dust controls, can be found in several detailed compilations prepared by the former U.S. Bureau of Mines, whose responsibilities have now been transferred to NIOSH. (U.S. Bureau of Mines various reports, undated). If you exceed either verification limit, the District Manager will suggest that you implement additional controls.

As discussed in section II. B., MSHA recognizes that improvements in control technology have not kept pace with the increase in production technology associated with high-production longwall MMUs. Average longwall shift production reported during bimonthly sampling has increased from 890 tons per shift in 1980, to over 4900 tons per shift in 1999. Given the state of longwall dust control technology, the currently-available engineering or environmental controls may not succeed in sustaining continuous compliance at certain locations downwind of the longwall operator (occupation code—044) at some high-production longwall MMUs under typical mining conditions.

For your longwall operation, if you believe that you have implemented all feasible engineering or environmental controls, you may submit a written request to MSHA's Administrator for Coal Mine Safety and Health in Arlington, Virginia, to request for MSHA to review your longwall mining operation and determine if you have, in fact, implemented all feasible engineering controls.

Upon receipt of such a request, MSHA would solicit guidance from a panel of experts which would be established for making such determinations. Members of this panel would have extensive knowledge in respirable dust control and would represent the following organizations within MSHA: Technical Support, Division of Health, the MSHA District having jurisdiction over your mine, and one other MSHA District. In some cases, we may solicit advice from NIOSH. As part of their deliberations, the expert panel may visit your mine to observe the various controls in operation. Any decisions reached by this panel would be based on the review of available information, their combined experience in dust control, and sound engineering judgement.

If the Administrator determines that you are using all feasible engineering or environmental controls, we would notify you in writing that you have been granted approval to use either PAPRs approved under 42 CFR 84 or verifiable administrative controls as a supplemental means of control to protect miners required to work downwind of the longwall operator. You would also be informed that the location of the DO would be changed from the 060 to the 044 occupation, or other occupation designated by the District Manager depending on how your longwall MMU is ventilated. You must continue to maintain the work environment of the new DO at or below the verification limits using engineering or environmental controls, as demonstrated during plan verification. As discussed earlier, while it may be difficult to make the environment safe for some miners working on the longwall face under certain mining conditions, MSHA believes that an acceptable work environment can be provided for the longwall operator (occupation code—044) and other miners on a continuing basis. You must choose either PAPRs or verifiable administrative controls for your ventilation plan. The notification would grant approval of an interim verification plan allowing the use of PAPRs or administrative controls as a

supplemental means of compliance. You must introduce additional engineering or environmental controls as they become available and feasible. Every six months, as part of our regular review of your mine ventilation plan, we would follow-up on your efforts to comply with this requirement.

Sections 70.212 through 70.215

Use of Approved Powered, Air Purifying Respirators

These sections would establish the requirements for utilizing PAPRs to supplement engineering or environmental controls.

Section 70.212 For my longwall operation, what must I (the operator) do in order to use approved PAPRs to supplement engineering or environmental controls?

This proposed section would require you to submit a revised ventilation plan to MSHA within five days of receipt of MSHA's written approval in accordance with § 70.211 if you choose to use approved PAPRs to supplement engineering or environmental controls. Your revised plan must specify the engineering or environmental controls you believe are capable of maintaining respirable dust concentrations (1) at or below the verification limits in the environment of the new DO (previously occupation 060, and currently occupation 044 or another occupation designated by the District Manager), and (2) at or below two times the verification limits in the environment of any miner working on the longwall face (downwind of the DO) who is required to wear a PAPR.

This is based upon the demonstrated effectiveness of PAPRs on longwall MMUs and the range of longwall air velocities observed by MSHA inspectors discussed earlier in section II.B.2, which led MSHA to reduce the protection factor assigned to loose fitting, helmeted PAPRs from 25 to two. In other words, the maximum full shift, MRE-equivalent concentration of respirable dust allowed in the environment of any miner working on the longwall face (downwind of the DO) who is required to wear a PAPR cannot exceed 4.0 mg/m^3 of respirable coal mine dust and 200 μg/m^3 of respirable quartz dust.

In addition to specifying all feasible engineering or environmental controls to be used, you would be required to include in your plan a written respiratory protection program for PAPRs for all affected miners as described in § 72.710. MSHA's District Manager may require you to modify the respiratory protection program before granting provisional approval of your ventilation plan.

Once MSHA grants provisional approval, we will verify the effectiveness of the revised dust control provisions of the ventilation plan. We will sample the environment of the DO and of those miners that your plan requires to wear approved PAPRs. If effectiveness of the plan is verified, it would become your interim ventilation plan.

In order to continue using PAPRs for compliance purposes, you would be required to maintain the effectiveness of your engineering or environmental controls, as well as the effectiveness of your approved PAPR respiratory protection program. We believe that the effectiveness of a PAPR is dependent upon proper training and continued maintenance. Training and maintenance procedures are part of an effective respiratory protection program. The provision 30 CFR 72.710 requires all respirators used in an underground coal mine to be selected, fitted, used, and maintained in accordance with the provisions of the American National Standards Institutes ''Practices for Respirator Protection ANSI Z88.2–1969.'' These provisions include training miners in the use and maintenance of respirators and the limitations of the specific respirator worn. Necessary maintenance includes examining it for defects prior to use, charging the batteries properly, and appropriate replacement of parts including, but not limited to, the filter elements, visors, batteries, blowers, and face seals. Furthermore, all respiratory equipment used in an underground coal mine must be approved by the National Institutes for Occupational Safety and Health (NIOSH) under 42 CFR part 84.

The use of PAPRs is not intended to be permanent. Their use as a supplemental control would be permitted only on an interim basis, until feasible engineering or environmental controls become available. You would have to implement any feasible engineering and environmental controls, as they become available.

Section 70.213 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating a PAPR respiratory protection program?

Approval of your interim mine ventilation plan would depend on the results of verification sampling and the operating conditions in effect for each sample. Paragraph (b) adds additional criteria or ''critical values'' for coal mine dust and quartz dust to those specified in § 70.209. These additional critical values, listed in Table IV–2, would apply to the environments of workers required to wear PAPRs under the plan. The critical values given in § 70.209 would continue to apply to DO samples. However, once an interim ventilation plan is approved, the position of the DO will change. Your plan would be approved if it reflects the dust control parameters in place during verification sampling and none of the verification samples exceed the corresponding critical values. No DO dust sample obtained during the verification process can exceed 2.0 mg/m^3 (respirable coal mine dust) or 100 μg/m^3 (respirable quartz dust). Since we estimate a protection factor of two, no verification sample from the environment where workers are required to wear PAPRs could exceed 4.0 mg/m^3 (coal mine dust) or 200 μg/m^3 (quartz dust).

TABLE IV–2.—CRITICAL VALUES FOR VERIFYING PLAN EFFECTIVENESS IN THE ENVIRONMENT OF WORKERS REQUIRED TO WEAR PAPRS. THE RESULT OF EACH SAMPLE USED TO VERIFY PLAN EFFECTIVENESS FOR SUCH WORK ENVIRONMENTS MUST BE LESS THAN OR EQUAL TO THE APPROPRIATE CRITICAL VALUE

Number of shifts meeting criteria for verification sampling	Critical value for coal mine dust (μg/m^3)	Critical value for quartz dust (μg/m^3)
1	3.54	174
2	3.77	187
3	3.89	194
4 or more	4.0	200

Section 70.214 For my longwall operation, under what circumstances may I (the operator) continue to use PAPRs to supplement engineering or environmental controls?

In order to continue use of PAPRs to supplement your engineering or environmental controls, you must comply at all times with the dust control provisions of your interim mine ventilation plan. This includes: (1) implementing and maintaining all feasible engineering or environmental controls on each shift; and (2) complying with all provisions of your approved PAPR respiratory protection program. In addition, to ensure the continued effectiveness of your approved dust control parameters, no DO sample taken by an MSHA inspector could exceed the applicable dust standard. Furthermore, no MSHA measurement for any miner working downwind of the DO could exceed twice the applicable dust standard.

Finally, you would be required to continue to seek improvements and implement, when they became available, any feasible engineering or environmental controls. MSHA will follow-up on your efforts in this regard as part of its regular six-month review of your mine ventilation plan under § 75.370.

Respirator programs require continuous administrative attention to assure continued effectiveness. MSHA's District Manager would evaluate, at least quarterly, the effectiveness of all installed engineering or environmental controls, the effectiveness of your PAPR respiratory protection program, and your performance in complying with all other plan provisions.

Section 70.215 What if an MSHA DO sample exceeds the applicable dust standard, or an MSHA sample for a miner required to wear a PAPR exceeds twice the applicable dust standard.

This proposed section would require you to review your dust control procedures and promptly take action which would prevent similar occurrences in the future. Also, you must review your approved PAPR respirator program to assure its continued effectiveness. Dust levels in excess of the applicable standard could result from a change in operating conditions, because of an abnormal condition or work practice, or due to production exceeding the VPL. If you determine that you cannot comply with the dust standard, you would need to amend your interim ventilation plan and submit it to the District Manager for review and approval.

If you are cited under § 75.371 for failure to comply with your approved interim plan, the District Manager may conduct an investigation to determine if you are complying with the dust control provisions of your approved interim ventilation plan. If the investigation discloses that you are not following your plan, MSHA may revoke approval of your plan.

Finally, the District Manager may revoke your interim plan and withdraw permission to use PAPRs for compliance purposes if you have a record of noncompliance with your interim ventilation plan, or if MSHA samples indicate that miners are not adequately protected. If this occurs, your revised interim plan must include a VPL at which you can comply with the applicable standard.

Sections 70.216 Through 70.218

Use of Verifiable Administrative Controls

These sections establish requirements for using verifiable administrative controls to supplement engineering or environmental controls.

Section 70.216 For my longwall operation, what must I (the operator) do in order to use verifiable administrative controls to supplement engineering or environmental controls?

''Verifiable administrative controls'' are work practices that reduce miners' daily exposure to respirable dust by altering the way in which work is performed such as rotating miners to areas having lower concentrations of respirable dust. To be considered verifiable administrative controls, it is necessary that the practices: (1) Can be reviewed to confirm proper implementation, (2) are clearly understood by miners, and (3) can be applied consistently over time. If you choose to use verifiable administrative controls for compliance purposes, paragraph (a) requires you to submit a revised ventilation plan to MSHA's District Manager within five days of receiving MSHA's written approval in accordance with § 70.211. This plan must specify: (1) the feasible engineering or environmental controls to be used for reducing respirable dust concentrations to the lowest possible level; (2) the verifiable administrative controls to be implemented on the longwall MMU; and (3) the procedures to be employed for ensuring compliance with the verifiable administrative controls on every shift.

Once MSHA grants provisional approval, we will verify the effectiveness of the revised dust control provisions of the ventilation plan. We will sample *all* miners working on the longwall face, including the DO (occupation code 044 or other occupation designated by the District Manager), to demonstrate effectiveness of the proposed dust control provisions. If effectiveness of the plan is verified, it would become your interim ventilation plan.

The use of verifiable administrative controls is not intended to be permanent. Their use for compliance purposes would be permitted only on an interim basis, until feasible engineering or environmental controls become available. You would have to implement any feasible engineering and environmental controls, as they become available. You must make sure that you continue to comply with your approved administrative controls, and you must maintain the effectiveness of your engineering or environmental controls. Finally, you must implement any feasible engineering or environmental controls methods that become available, and that would prevent full shift dust concentrations from exceeding the applicable dust standard at any location at which miners normally work at the longwall face.

Section 70.217 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating verifiable administrative controls?

Approval of the dust control provisions of your interim ventilation plan depends on the results of your verification samples and on the actual operating conditions under which each sample was taken. None of the samples obtained during the verification process may exceed 2.0 mg/m^3 (coal mine dust) or 100 μg/m^3 (quartz dust). Under paragraph (b), MSHA's District Manager may approve the dust control provisions of your interim plan if (1) the plan reflects all dust controls, including administrative controls in effect during verification sampling and (2) none of the samples used to verify plan effectiveness exceed the appropriate critical values as specified and explained in § 70.209.

Section 70.218 For my longwall operation with an approved interim ventilation plan, what if an MSHA sample exceeds the applicable dust standard?

Under this section, you must immediately review your dust control procedures, including the effectiveness of your administrative controls, and take action to prevent similar occurrences in the future if any MSHA compliance sample exceeds the applicable dust

standard. Dust levels in excess of the applicable standard could result from a change in operating conditions, because of an abnormal condition or work practice, or due to production levels which exceed the VPL. If changes are made in your interim ventilation plan, you must submit them to the District Manager for review and approval.

If you are cited under § 75.371 for failure to comply with your approved plan, the District Manager may conduct an investigation to determine if you are complying with the dust control provisions of your approved interim ventilation plan. If the investigation discloses that you are not following your plan, approval of your plan may be revoked.

Finally, the District Manager may revoke your interim plan and withdraw permission to use administrative controls for compliance purposes if you have a record of noncompliance with your interim ventilation plan, or if MSHA samples indicate that miners are not adequately protected. If this occurs, your revised interim plan must include a VPL at which you can comply with the applicable standard.

Actions Necessary When You Are in Violation of Respirable Dust Standards

Section 70.219 What must I (the operator) do if I am cited for exceeding the applicable dust standard?

If you are cited for violating § 70.100 or § 70.101, you would be required to promptly review your dust control practices to determine the cause of the excessive dust concentration. You would also be required to take corrective action to prevent miners from being overexposed in the future by lowering the concentration of respirable dust to comply with the applicable dust standard. You would be required to take these actions within the abatement period fixed in a citation.

After reviewing your dust control practices and taking corrective action, you would be required to incorporate changes reflecting these actions into your ventilation plan in accordance with § 75.370(a)(2). If, in your opinion, the corrective actions taken do not warrant a change in your plan's dust control parameters, you would need to explain that in your response to the District Manager. This will enable the District Manager to determine if the ventilation plan should be changed and re-verified.

Based on the dust parameters that were in use for the results of the compliance sample(s) dust concentrations measured by MSHA samples, and the information submitted by the operator regarding the type(s) of corrective action that were taken, MSHA may elect to sample the cited entity to determine the effectiveness of your abatement actions. If these samples indicate compliance with the applicable dust standard, you would be required to incorporate your corrective actions in your mine ventilation plan. At a minimum you would be required to incorporate in your plan the actual parameters that were in effect when MSHA sampled. If the MSHA samples indicate continued noncompliance, then MSHA may revoke approval of your ventilation plan.

Information To Be Posted on the Mine Bulletin Board

Section 70.220 What information must I (the operator) post on the mine bulletin board?

This proposed section would provide ready access to current information relating to the plan verification process and to the respirable dust conditions in the mine. You would be required to post on the mine bulletin board the actual values of specific dust control parameters measured by MSHA on shifts used for plan verification and all sample results. For the same reason, the proposal would require that all written notifications received from the District Manager regarding any aspect of the plan verification process. You could remove the information from the mine bulletin board after the plan is approved by the District Manager.

Also, you would also be required to post the results of MSHA compliance sampling on the bulletin board. These results must be posted for at least 31 days. These posting requirements are intended to promote miner awareness of the conditions under which the mine ventilation plan has been shown to be effective in controlling dust levels in their work environment. The goal is consistent with the statutory intent that miners play a role in preventing unhealthy conditions and practices where they work.

Status Change Reports

Section 70.221 What action must I (the operator) take if the operational status of my mine, MMU, or DA changes?

In order to conduct verification and compliance sampling, it is essential that you provide current information to us concerning the production status of MMUs and DAs within those mines that are in producing status. Therefore, to reduce the chances of visiting a mine whose operating status prevents the MSHA inspector from sampling, you would continue to be required to report the change in operational status of the mine, MMU, or DA to the MSHA District Office or to any other MSHA office designated by the District Manager. You would also be required to report a change in operational status if it would affect the verification sampling requirements under this proposal. Status changes would be reported in writing within three working days after the status change occurred. The reporting of changes in operational status is not a new requirement and is contained in existing § 70.220. MSHA is renumbering existing § 70.220 as § 70.221.

Changes to Part 75

Section 75.370 Mine Ventilation Plan; Submission and Approval

This proposal would amend § 75.370 by adding a new paragraph (h). Paragraph (h) would require that records of the amount of material produced each production shift by each MMU during the previous six-month period be made available for inspection by authorized representatives of the Secretary and the miners' representative.

These records are essential for the plan verification process. The records are needed to establish the verification production level (VPL) required under proposed § 75.371(f) and to confirm that the 30-shift period on which the VPL is based represents typical production conditions for the MMU. Additionally, MSHA and the miners' representative need these records to monitor changes in production levels that may affect the plan's adequacy. Finally, because verification of a plan's effectiveness is conditioned on the VPL, these records are necessary to determine if the VPL used in approving a plan continues to reflect typical production levels at the mine.

The production records for each MMU may be maintained in any form utilized by the operator to measure the total amount of material produced, so long as the method is the same as that used to establish the VPL required for plan verification. For example: number of loaded shuttle cars, feet of advance, raw tonnage, or number of longwall passes would each be an acceptable method of recording production—so long as the same method was consistently used.

Section 75.371 Mine Ventilation Plan; Contents

The proposal would revise paragraphs (f) and (t). Existing paragraph (f) would be revised to require the ventilation plan to include any specific work practices used to minimize the dust

exposure of individual miners, information on the location of the roof bolter(s) during the mining cycle for each continuous miner section, and the cut sequence for each longwall mining section.

Also, every ventilation plan would be required to include information on the length of each normal production shift and to specify the VPL as defined in § 70.2. Although a VPL would be included in the ventilation plan, MSHA would not cite you for producing at levels exceeding the VPL. We would expect production on an MMU to exceed the VPL on about 33 percent of all production shifts. If the District Manager determines that your production exceeds the VPL on more than 33 percent of the production shifts over a six-month period, then this may trigger the plan verification process using a higher VPL.

For interim plans involving the use of powered, air purifying respirators (PAPRs) or verifiable administrative controls, the plan must also include the information respectively required under § 70.212(b) or § 70.216(a). This additional information is necessary to fully assess the adequacy of mine ventilation plans.

Since MSHA is proposing to revoke existing §§ 70.207 and 70.208 which require sampling by mine operators, existing paragraph (t) would be revised to remove the provision that mine operators identify in the mine ventilation plan the locations where samples for designated areas (DA) will be collected, including the specific location of each sampling requirement, and the reference to § 70.208. However, to ensure that the mine atmosphere where miners are normally required to work or travel is continuously maintained in compliance, proposed paragraph (t) would continue to require mine operators to identify in the mine ventilation plan the location of each DA, defined in proposed § 70.2(e), and the particular dust control measures that would be used at the dust generating sources for these locations. These locations would continue to be sampled by MSHA inspectors as discussed earlier (see Background Section) to determine compliance with the applicable standard and to assess the adequacy of the operator's dust control measures.

Part 90

The proposed rule would revoke all operator sampling requirements associated with coal miners who have evidence of the development of pneumoconiosis under Part 90. MSHA is republishing the entire regulatory text of Part 90 as it would appear under the proposal for ease of review. Aside from a few technical clarifications which are described below, the only change to Part 90 would be to remove all references to operator sampling.

Section 90.1 Scope.

The scope of part 90 would not change under the proposal. However, the phrase ''including respirable dust sampling for Part 90 miners'' would be removed from the end of the sentence which states that ''the rule also sets forth the operator's obligations.''

Section 90.2 Definitions.

All definitions would remain unchanged under the proposal with the exception of those for ''concentration'' and ''mechanized mining unit'' which have been clarified as described below. The definition for ''valid respirable dust sample'' would be removed because mine operators would no longer collect Part 90 samples under the proposal. No discussion has been included below if the definition would not change under the proposal. For ease of reference, subsection references have been added for each definition.

Concentration is a measure of the amount of substance contained per unit volume of air.

The existing definition would be modified so that ''concentration'' refers to an 8-hour Mining Research Establishment (MRE) equivalent measure of the amount of sampled material contained per unit volume of air. The proposed revision would include the constant factor of 1.38 which the Secretary currently uses to convert concentration of respirable dust measured with approved sampling devices to an equivalent concentration as measured with an MRE instrument.

The existing coal mine dust standards were developed from 8-hour shift exposure measurements. Therefore, if a sample is taken over a period other than eight hours, the concentration measurement must be adjusted to be equivalent to an eight-hour exposure. This is necessary in order to provide equal protection to miners working shifts greater than eight hours and would be accomplished by multiplying the sampler flow rate by 480 minutes, regardless of the length of time that the sample was actually collected.

For this example, suppose a DO sample is collected over a 9-hour shift that includes one hour of travel time. Suppose that the amount of dust accumulated during travel is negligible, and the amount accumulated during production is 1.5 mg. If the concentration were not adjusted to an 8-hour equivalent, it would be diluted by the time spent traveling and calculated as 1.92 mg/m^3. Under the proposed definition, the calculated concentration would be 2.16 mg/m^3.

The proposed definition does not change the daily limit on accumulated exposure intended by the existing exposure limit for coal mine dust. Since the current limit was based on an assumption that exposure occurs over an 8-hour shift, it corresponds to a daily cumulative exposure limit of $8 \times 2.0 =$ 16 mg-hr/m^3. The proposed definition of concentration would maintain this same MRE-equivalent 16 mg-hr/m^3 daily limit, regardless of the length of any shift worked.

To continue the example, the exposure accumulated during a day is the same, whether from 8 hours at an average of 2.16 mg/m^3 or from 9 hours at an average of 1.92 mg/m^3. In either case, the MRE-equivalent exposure accumulated for the day is 17.3 mg-hr/m^3, which exceeds the intended daily limit of 16 mg-hr/m^3. Under the proposed definition, this would be reflected by the fact that the calculated concentration exceeds 2.0 mg/m^3. MSHA solicits comments on this method of adjusting concentrations to an 8-hour equivalent.

Mechanized mining unit has been revised to refer to the proposed rule new § 70.205. The definition also clarifies that each MMU is assigned a four digit identification number by MSHA. The MMU retains the identification number regardless of where the unit relocates within the mine. When two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment are to be identified as a single MMU. When two or more MMUs are simultaneously engaged in the production of material within the same working section, each such MMU is identified separately.

Section 90.100 Respirable dust standard.

The Part 90 respirable dust standard would not change. Since MSHA would collect all Part 90 samples under the proposal, the sentence which provides that ''concentrations shall be measured with an approved sampling device and expressed in terms of an equivalent concentration determined in accordance with § 90.206'' would be removed.

Section 90.101 Respirable dust standard when quartz is present.

Because MSHA would collect all Part 90 samples, this section would be

changed by removing the sentence which provides that ''concentrations shall be measured with an approved sampling device and expressed in terms of an equivalent concentration determined in accordance with § 90.206.''

An example has been added to explain how a reduced standard is established when respirable dust associated with a part 90 miner contains quartz in the amount of 20%.

Section 90.102 Transfer; notice.

This section would remain unchanged.

Section 90.103 Compensation.

This section would remain unchanged.

Section 90.104 Waiver of rights; re-exercise of option.

This section would remain unchanged.

Section 90.201 MSHA Respirable dust sample reports; Operator status change reporting requirement.

Under the proposal, mine operators would no longer collect respirable dust samples under Subpart C of Part 90. Consequently, all of Subpart C, ''Sampling Procedures,'' including §§ 90.201–209 would be removed. Existing § 90.210 would be renumbered as § 90.201. The requirements of this section would remain unchanged.

Section 90.202 Operator status change reports.

Under the proposal, mine operators would no longer collect respirable dust samples under Subpart C of Part 90. Consequently, all of Subpart C, ''Sampling Procedures,'' including §§ 90.201–209 would be removed. Existing § 90.220 would be renumbered as § 90.202. The requirements of this section would remain unchanged.

Section 90.300 Respirable dust control plan; filing requirements.

There would be no change in the filing requirements for respirable dust control plans under the proposal.

Section 90.301 Respirable dust control plan; approval by District Manager; copy to part 90 miner.

There would be no change in the approval process or notice requirements for respirable dust control plans under the proposal.

V. Health Effects

A. Introduction

Since the 1800s, occupational respiratory disease associated with working in a coal mine has been commonly referred to as ''Black Lung.'' As coal is mined, respirable-sized dust is generated. Depending upon the mine location and its geologic features, silica may also be present in the mine atmosphere. Dust in air that is breathed by miners has the potential to be deposited in their lungs. Some of this dust may be retained. Coal mine dust remaining in the lungs of miners for prolonged periods of time has the potential to result in respiratory diseases, sometimes even after occupational exposure to respirable coal mine dust has stopped. There is a clear and direct relationship between miners' cumulative exposures (*i.e.*, dose multiplied by the time exposed to the coal mine dust) to respirable coal mine dust and the severity of resulting respiratory conditions (as discussed more extensively, later in this section).

Diseases resulting from long-term retention of coal mine dust in the lung include chronic coal workers' pneumoconiosis (simple CWP), progressive massive fibrosis (PMF), silicosis, and chronic obstructive pulmonary disease (COPD) (*e.g.*, asthma, chronic bronchitis, emphysema). Historically, the medical term, ''pneumoconiosis,'' has included simple CWP and PMF and their sub-categories. Chronic, or simple, CWP is partitioned into three levels of severity, proceeding from lowest to highest: category 1, category 2, and category 3. Progressive Massive Fibrosis is similarly divided into three categories of increasing levels of severity: A, B and C.

Miners with simple CWP have a substantially increased risk of developing PMF. In the advanced stages of pneumoconiosis (*i.e.*, PMF), a significant loss of lung function may occur and respiratory symptoms (*e.g.*, breathlessness, wheezing) may persist. Miners are at risk of increased morbidity and premature mortality due to simple CWP, PMF and various other respiratory diseases.

Factors that are important in the development of simple CWP, PMF and COPD include the type of dust (*e.g.*, coal and/or silica), dust concentration (to which the miner was exposed), number of years of exposure, age of the miner (often measured as age at time of medical examination), and rank of the coal (the higher the rank the greater the risk).

In 1998, MSHA estimated that approximately 45,000 miners and 39,000 miners were employed at underground and surface coal mines, respectively (Mattos, 1999). A small percentage of the mining involved anthracite coal, the highest rank coal, while most involved bituminous coal which is a medium rank coal.

There are complementary data sources, described below, which provide estimates of the prevalence of occupational respiratory disease among coal miners. Together these data demonstrate the progress over the last thirty years in the reduction of occupational respiratory disease among coal miners, as well as the need for further action to reduce occupational lung disease among today's coal miners.

Estimates of the prevalence of simple CWP and PMF among the underground coal miners are gathered from the x-ray program, through which operators are required to provide miners the opportunity to be evaluated periodically for the presence of occupational lung disease, mandated pursuant to Section 203(a) of the Mine Act (30 U.S.C. 843(a)). However, miners are not required to participate. From 1970 to 1995, the prevalence of simple CWP and PMF among miners participating in the mandated x-ray program has dropped from 11 percent to 3 percent (MSHA, Internal Chart, 1998).

In accordance with 30 CFR part 50, those cases of occupational illnesses which both surface and underground coal mine operators learn of must be reported to MSHA. Under this requirement, mine operators reported 224 cases of pneumoconiosis (simple CWP and PMF, combined) in 1998 (Mattos, 1999). Of these, 138 cases occurred among coal miners who worked underground, while the remaining 86 cases occurred among surface coal miners (Mattos, 1999). There were also 14 cases of silicosis, eight in underground mines, reported to MSHA in 1998 in accordance with 30 CFR part 50 (Mattos, 1999). Since miners participate in both these programs at their own discretion, these data do not include the occupational health experience of all coal miners. The prevalence of occupational lung disease among participating miners may significantly differ from the prevalence among non-participants. Thus, the data from these programs may not be representative of the true magnitude of the prevalence of simple CWP and PMF among today's coal miners.

In the 1990s, MSHA conducted a series of one-time medical surveillance programs, in various regions of the country, to develop a more accurate estimate of the prevalence of simple CWP and PMF. Through these special programs, MSHA tried to minimize obstacles which may prevent some miners from either participating in or reporting to operators the results of respiratory diagnostic procedures. Nine

geographical cohorts of miners, from around the country, were encouraged to participate in an independent x-ray program (MSHA, Internal Chart, 1999). These cohorts included eight active surface coal mining communities in the states of Pennsylvania, Kentucky and West Virginia, as well as the towns of Poteau, Oklahoma and Gillette, Wyoming. A ninth cohort included underground miners in Kentucky. The process was designed to encourage miner participation by providing for a greater degree of anonymity than may be available under the program provided by Section 203(a) of the Mine Act (30 U.S.C. 843(a)). Across the eight surface cohorts surveyed, the prevalence rate of simple CWP and PMF combined, among participants was 4.8%. The prevalence rate among the participating underground Kentucky miners was 9.2%.

Also, as part of its ongoing effort to ''end black lung now and forever,'' beginning in October 1999, MSHA implemented a pilot program to provide miners at both surface and underground mines with confidential health screening. Referred to as the ''Miners' Choice Health Screening,'' the program addresses the key recommendations of the Secretary's Advisory Committee by (1) increasing participation toward the 85-percent level and (2) expanding the scope of the eligibility to include surface coal miners and surface coal mine independent contractors. The pilot program operates separately from the existing Coal Workers' X-ray Surveillance Program administered by NIOSH. Since the Miners' Choice Health Screenings' inception, over 7,000 miners have been screened, with the participation rate in most areas exceeding 50 percent. With half of the x-rays taken during the first six months having been processed by NIOSH, preliminary results indicate a prevalence rate of approximately 2.25 percent.

The National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) are concerned about the prevalence of occupational lung disease among today's miners. Epidemiological studies from the U.S. and abroad have consistently shown that underground and surface coal miners are at risk of developing simple CWP, PMF, silicosis, and chronic obstructive pulmonary disease (NIOSH Criteria Document, 1995).

B. Hazard Identification

1. Agent: Coal

Coal is a fossil fuel derived from partial degradation of vegetation. Through its combustion, energy is produced which makes coal a valuable global commodity. It has been estimated that over one-third of the world uses energy provided by coal (Manahan, 1994). Approximately 1,800 underground and surface coal mines are in operation in the United States annually producing slightly over a billion short tons of coal (Mattos, 1999).

Coal may be classified on the basis of its type, grade, and rank. The type of coal is based upon the plant material (*e.g.*, lignin, cellulose) from which it originated. The grade of coal refers to its chemical purity. Although coal is largely carbon, it may also contain other elements such as hydrogen, oxygen, nitrogen, and sulfur. ''Hard'' coal refers to coal with a higher carbon content (*i.e.*, 90–95%) than ''soft'' coal (*i.e.*, 65–75%). Coal rank relates to geologic age, indexed by its fixed carbon content, down to 65%, and then by its heating value. Volatile matter varies inversely with the fixed carbon value. The most commonly described coal ranks include lignite (low rank), bituminous coal (medium rank), and anthracite (high rank) (Manahan, 1994).

2. Physical State: Coal Mine Dust

Aerosols are a suspension of solid or liquid particles in air (Mercer, 1973); they may be dusts which are solid particles suspended in the air. Coal dust may be freshly generated or may be re-suspended from surfaces on which it is deposited in mines. As discussed below, coal mine dust may be inhaled by miners, depending upon the particle size.

Coal mine dust is a heterogenous mixture, signifying that all coal particles do not have the same chemical composition. The particles are influenced by the type, grade, and rank of coal from which they were generated (Manahan, 1994). Irrespective of differences in coal characteristics, these dusts are water-insoluble, which is important biologically and physiologically. Unlike soluble dusts which may readily pass into the respiratory system and be cleared via the circulatory system, insoluble dusts may remain in the lungs for prolonged periods of time. Thus, a variety of cellular responses may result that could eventually lead to lung disease.

3. Biological Action: Respirable Coal Mine Dust

The principal route of occupational exposure to respirable coal mine dust occurs via inhalation. As a miner breathes, coal mine dust enters the nose and/or mouth and may pass into the mid airways (*e.g.*, bronchi, terminal bronchioles) and lower airways (*e.g.*, respiratory bronchioles, alveolar ducts).

Coal mine dust has a size distribution that is estimated to range between 1 and 100 micrometer (μm) (1 μm = 10^{-6} m) (Silverman, *et al.*, 1971). The size of coal particles is critical in determining the level of the respiratory tract at which deposition and retention occur (American Conference of Governmental Industrial Hygienists, 1999; American Industrial Hygiene Association, 1997).

Particles that are above 10 μm are largely filtered in the nasal passages, although some of these particles may reach the thoracic (or tracheal-bronchial) region of the lung (*e.g.*, 6% of 20 μm) (American Conference of Governmental Industrial Hygienists, 1999). Thus, there is evidence that ''oversized'' particles (*i.e.*, >10 μm) can move beyond the nose, deeper into the respiratory tract. Particles below 10 μm may easily move throughout the respiratory tract. As particle size decreases from 10 to 5 μm, however, there is greater penetration into the mid and lower regions of the lung. Particles that are approximately 1–2 μm are the most likely to be deposited in the lung (American Conference of Governmental Industrial Hygienists, 1999; Mercer, 1973). During mouth breathing, there may be a slight upward shift in the particle deposition curve such that 2–3 μm-sized particles are the most likely to be deposited in the respiratory tract (Heyder, *et al.*, 1986). Irrespective of nasal or mouth breathing, the potential respiratory tract penetration of particles whose size is approximately 10 μm or less is important because particles in the respirable size range deposit in the deep lung where clearance is much slower.

For the purposes of this rule, ''respirable dust'' is defined as dust collected with a sampling device approved by the Secretary of Labor and the Secretary of the Department of Health and Human Services (DHHS) in accordance with 30 CFR Part 74 (Coal Mine Dust Personal Sampler Units). In practice, the coal mine dust personal sampler unit has been used in the U.S. The particles collected with an approved sampler approximate that portion of the dust which may be deposited in the lung (West, 1990; 1992). It does not, however, indicate pulmonary retention (*i.e.*, those

particles remaining in the lung). For those particles that are deposited in the lung, clearance mechanisms normally operate to assist in their removal. For example, within the thoracic (tracheal-bronchial) region of the lung, cilia (*i.e.*, hairlike projections) line the airways and are covered by a thin layer of mucus. They assist in particle clearance by beating rhythmically to project particles toward the throat where they may be swallowed, coughed, sneezed, or expectorated. This rhythmic beating action is effective in removing particles fairly quickly (*i.e.*, hours or days). Within the alveolar region of the lung, particles may be engulfed by pulmonary macrophages. These large ''wandering cells'' may remove particles via the blood or lymphatics. This process, unlike the movement of the cilia is much slower (*i.e.*, months or years). Thus, some particles, particularly those that are insoluble, may remain in the alveolar region for long periods of time, despite the fact that pulmonary clearance is not impaired. It is the pulmonary retention of coal mine dust which may be the impetus for respiratory disease.

It is also important to note that silica may be present in the coal seam, within dirt bands in the coal seam, and in rock above and below coal seams. Of the silica found in coal mines, quartz is the form which is found. Thus, quartz may become airborne during coal removal operations (Manahan, 1994). Miners may inhale dust that is a mixture of quartz and coal. MSHA is concerned with the inhalation of quartz since it may be deposited in the lungs of miners and produce silicosis. This is a restrictive lung disease which is characterized by a stiffening of the lungs (West, 1990; 1992). Silicosis has been seen in coal miners (*e.g.*, surface miners, drillers, roofbolters) (Balaan, *et al.,* 1993). Silicosis may develop acutely (*i.e.*, 6 months to 2 years) following intense exposure to high levels of respirable crystalline quartz. Silicosis has also been observed in coal miners following chronic exposure (*i.e.*, 15 years or more), but may be accelerated (*i.e.*, 7–10 years) in some cases (Balaan, *et al.,* 1993). Silicosis is irreversible and may lead to other illnesses and premature mortality. People with silicosis have increased risk of pulmonary tuberculosis infection and an increased risk of lung cancer (Althouse, *et al.*, 1995; International Agency for Research on Cancer, 1997). MSHA's current standard of 2.0 mg/m^3 for respirable coal dust requires that quartz levels be 5% or lower. Otherwise, the 2.0 mg/m^3 respirable coal dust exposure limit does not apply and must be adjusted downward for percent quartz. If coal dust contains more than 5% quartz, then the following formula is applied (30 CFR 70.101; 30 CFR 71.101):

Respirable dust standard (mg/m^3) = [(10 mg/m^3)/(%Quartz)]

The intent of this formula is to maintain miner exposures to quartz below 0.1 mg/m^3 (100 μg/m^3).

C. Health-Related Effects of Respirable Coal Mine Dust

1. Description of Major Health Effects

Consistently, epidemiological studies have demonstrated miners to be at risk of developing respiratory symptoms, a loss of lung function, and lung disease as a consequence of occupational exposure to respirable coal mine dust. As noted previously, risk factors include type(s) of dust, dust concentration, duration of exposure, age of the miner (often measured as age at time of medical examination), and coal rank.

a. *Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF).* In earlier stages of pneumoconiosis the term, ''simple coal workers' pneumoconiosis'' (simple CWP), has been used, while in more advanced stages, the terms ''complicated CWP'' and PMF have been used interchangeably. Simple CWP and PMF involve the lung parenchyma and are produced by deposition and retention of respirable coal dust in the lung.

To determine if a miner has simple CWP or PMF, chest x-rays are taken and classified by a certified radiologist or reader. Opacities are identified on chest films and then classified using a scale of 0–3 (*e.g.*, simple CWP category 1), where higher category values indicate increasing concentration of opacities. In some instances, two category values may be given. For example, simple CWP category ⅔ signifies that the reader decided the film was category 2, but suspected that it might have been category 3. The International Labour Office (ILO) has provided a full description of the criteria for these classifications (ILO, 1980).

Simple CWP can be associated with a loss of lung function and with premature mortality (Morgan, *et al.*, 1974; Jacobsen, 1976; Cochrane, *et al.*, 1979; Parkes, 1982). MSHA recognizes that simple CWP increases the risk of developing PMF substantially (Cochrane, 1962; Jacobsen, *et al.*, 1971; McLintock, *et al.*, 1971; Balaan, *et al.*, 1993).

Progressive massive fibrosis (PMF) is associated with decreased lung function and increased premature mortality (Rasmussen, *et al.,* 1968; Atuhaire, *et al.,* 1985; Miller and Jacobsen, 1985; Attfield and Wagner, 1992). Progressive massive fibrosis is also associated with increases in respiratory symptoms such as chest tightness, cough, and shortness of breath. Miners with PMF also have an increased risk of acquiring infections and pulmonary tuberculosis (Petsonk and Attfield, 1994; Yi and Zhang, 1996). Finally, miners with PMF have an increased risk of right-side heart failure (*i.e.,* cor pulmonale) (Cotes and Steel, 1987).

b. *Other Health Effects.* During a medical examination, a miner may be questioned by his physician about symptoms such as cough, phlegm production, chest tightness, shortness of breath, and wheezing. Occupational physicians may also conduct pulmonary function tests using spirometry or plethysmography. Pulmonary performance may be assessed via repeated measurements of lung volumes and capacities, such as the forced expiratory volume in one second (FEV_1), vital capacity (VC), forced vital capacity (FVC), residual volume (RV), and total lung capacity (TLC) (West, 1990; 1992). Changes in lung volumes and capacities may indicate a loss of the integrity of the lung (*i.e.,* respiratory system). More importantly, they can provide information for diagnosis of diseases affecting the airways and/or elasticity of the lung (*i.e.,* obstructive vs. restrictive lung disease)(West, 1990; 1992).

The term, chronic obstructive pulmonary disease (COPD), refers to three disease processes that are often difficult to properly diagnose and differentiate: chronic bronchitis, emphysema, and asthma (Coggon and Taylor, 1998; Garshick, *et al.,* 1996; West, 1990; 1992). As indicated by several studies, the exposure of miners to respirable coal mine dust place them at increased risk of developing COPD. Furthermore, COPD may occur in miners with or without the presence of simple CWP or PMF.

Chronic Obstructive Pulmonary Disease (COPD) is characterized by airflow limitations, and thus there is a loss of pulmonary function. As in simple CWP or PMF, a miner with COPD may have a variety of respiratory symptoms (*e.g.,* shortness of breath, cough, sputum production, and wheezing) and may be at increased risk of acquiring infections. Chronic Obstructive Pulmonary Disease is associated with increased premature mortality (Hansen, *et al.,* 1999; Meijers, *et al.,* 1997).

Briefly, in chronic bronchitis and in asthma, there is excess mucous

secretion in the mid-lower airways (West, 1990; 1992). In contrast, emphysema is characterized by dilatation (enlargement) of alveoli that are distal to the terminal bronchioles, which leads to poor gas exchange (*i.e.,* poor transfer of oxygen and carbon dioxide). Additionally, there is a breakdown of the interstitium between the alveoli. These pathological changes may be confirmed upon autopsy. With asthma, the airflow limitations may be partially or completely reversible, while they are only partially reversible with chronic bronchitis and emphysema.

The Mine Safety and Health Administration (MSHA) and the NIOSH recognize that respiratory symptoms, loss of lung function, and COPD may impair the ability of a miner to perform his job and may diminish his quality of life. Additionally, miners having such health effects are at increased risk of morbidity (*e.g.,* from cardio-pulmonary disease, infections) and premature mortality.

2. Toxicological Literature

To better understand the human health effects of exposure to respirable coal mine dust and to more fully characterize the associated risks, it is important to consider data that have been obtained in animal based toxicological studies. To date, sub-acute studies (a study with a duration of 30 days, or less, in which multiple exposures of the same agent are given) and chronic studies (a study with a duration of more than 3-months, in which multiple exposures of same agent are given) attempted to mimic miners' exposures. Inhalation was generally the route of exposure, although several studies have also employed instillation techniques (*i.e.,* a method which places a known quantity of dust into the trachea or bronchi).

Most recent toxicological studies have been short-term studies, largely focusing on ''lung overload'' (Sipes, 1996; Oberdorster, 1995; Morrow, 1988, 1992; Witschi, 1990), species-dependent lung responses (Nikula, *et al.,* 1997a,b; Mauderly, 1996; Lewis, *et al.,* 1989; Moorman, *et al.,* 1975), and particle size-dependent lung inflammation (Soutar, *et al.,* 1997). The data have shown that pulmonary clearance of particles may become impaired, potentially leading to inflammatory and other cellular responses in the lung. Although overloading has not been demonstrated in humans, the finding of reduced lung clearance among retired U.S. coal miners (Freedman and Robinson, 1988) is consistent with this possibility.

The data from Moorman, *et al.* (1975), Lewis, *et al.* (1989), and Nikula, *et al.* (1997a,b) are noteworthy for several reasons. First, these groups of investigators conducted chronic inhalation toxicity studies (*i.e.,* chronic bioassays). This is important since miners' exposures also occur via inhalation, and over a working lifetime. Secondly, the investigators used an exposure concentration of 2.0 mg/m^3 in their bioassays. As noted above, this is the current MSHA standard for respirable coal mine dust. Thirdly, the exposures involved nonhuman primates, whose responses are thought to closely mimic those of man. Some of the key findings of these studies included: deposition of coal dust in the animals' lungs, retention of coal dust in alveolar tissue, altered lung defense mechanisms, reduced pulmonary airflows, and hyperinflation of the lungs. One of the shortcomings of these studies is that complete dose-response relationships were not developed. However, at higher exposure concentrations, greater effects may be expected which is a basic tenet of toxicology. Thus, at exposure concentrations above 2.0 mg/m^3, MSHA and NIOSH believe that more severe obstructive lung disease may occur.

3. Epidemiological Literature

Epidemiology studies have consistently demonstrated the serious health effects of exposure to high levels of respirable coal mine dust (*i.e.,* above 2.0 mg/m^3) over a working lifetime.

Table V–1 lists epidemiology studies since 1986 whose results will be discussed on the basis of the type of observed health effect. Studies completed even earlier including the early work of Cochrane (1962), McLintock, *et al.* (1971), and Jacobsen, *et al.* (1971) demonstrated the adverse health effects (*e.g.,* simple CWP, PMF) of respirable coal mine dust in British coal miners.

Both early and recent studies have shown that the lung is the major target organ (*i.e.,* organ in which toxic effects occur) when exposure to respirable coal mine dust occurs. As seen in Table V–1, numerous studies of miners have been conducted. Recent U.S. studies were conducted using data from one or more of the first four rounds of the National Study of Coal Workers' Pneumoconiosis (NSCWP), and have provided extensive data on miners' health. Many of these studies demonstrated that miners are at increased risk of multiple, concurrent respiratory ailments (Attfield and Seixas, 1995; Kuempel, *et al.,* 1997; Meijers, *et al.,* 1997; Seixas, *et al.,* 1992).

TABLE V–1.—RESPIRABLE COAL MINE DUST EPIDEMIOLOGICAL STUDIES, BY REPORTED OUTCOMES FROM 1986 TO PRESENT

Studies	Reported outcomes
Meijers, *et al.,*1997	PMF, CWP, COPD, LLF
Maclaren, *et al.,*1989	PMF, CWP, LLF, RS
Kuempel*, *et al.,*1995	PMF, CWP, COPD
Bourgkard *et al.,*1998	PMF, CWP, LLF
Kuempel*, *et al.,*1997	
Love, *et al.,*1997	
Love, *et al.,*1992	
Attfield and Morring*,1992b	PMF, CWP
Attfield and Seixas*, 1995	
Hodous and Attfield*, 1990	
Hurley and Jacobsen, 1986	
Hurley and Maclaren, 1987	
Hurley, *et al.,* 1987	
Starzynski, *et al.,* 1996	
Yi and Zhang, 1996	
Wang, *et al.,*1997	CWP, LLF
Goodwin and Attfield*, 1998	CWP
Morfeld, *et al.,* 1997	

TABLE V–1.—RESPIRABLE COAL MINE DUST EPIDEMIOLOGICAL STUDIES, BY REPORTED OUTCOMES FROM 1986 TO PRESENT—Continued

Studies	Reported outcomes
Marine, *et al.,*1988	COPD, LLF, RS
Seixas*, *et al.,* 1993	
Soutar and Hurley, 1986	
Carta, *et al.,*1996	LLF, RS
Henneberger and Attfield*, 1997	
Henneberger and Attfield*, 1996	
Seixas*, *et al.,* 1992	
Attfield and Hodous*, 1992	LLF
Lewis, *et al.,* 1996	

COPD: Chronic obstructive pulmonary disease
CWP: Simple coal workers' pneumoconiosis
LLF: Loss of lung function
PMF: Progressive massive fibrosis
RS: Respiratory symptoms
*: Studies of U.S. Miners Who Participated in the National Study of Coal Workers' Pneumoconiosis (NSCWP)

a. *Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF).* Studies following Cochrane (1962) and McLintock *et al.* (1971) have confirmed that the risk of PMF increases with increasing category of simple CWP (Hurley and Jacobsen, 1986; Hurley, *et al.,* 1987; Hurley and Maclaren, 1988; Hodous and Attfield, 1990). However, the risk of PMF was greater than previously predicted among miners with simple CWP category 1 or without simple CWP (*i.e.,* category 0) (Hurley, *et al.,* 1987). The risk of PMF increased with increasing cumulative exposure, regardless of the initial category of simple CWP (Hurley, *et al.,* 1987), indicating that reducing dust exposures is a more effective means of reducing the risk of PMF than reliance on detection of simple CWP.

Attfield and Seixas (1995) have demonstrated a relationship between cumulative exposure to respirable coal mine dust and predicted prevalence of pneumoconiosis (*i.e.,* simple CWP, PMF). They studied a group of approximately 3,200 men who worked in underground bituminous coal mines. The U.S. miners and ex-miners had participated in Round 1 (1970–1972) or Round 2 (1972–1975) of the NSCWP and were examined again between 1985 and 1988. Chest x-rays were read to determine the number of cases of simple CWP and PMF. Dust exposure estimates were generated from measurements of dust concentrations as well as from work history. A logistic (or logit) regression model was used to estimate prevalence of simple CWP and PMF. In this statistical analysis, proportions are transformed to natural logarithmic values, *i.e.,* $y = \ln [p/(1-p)$, before a linear model is fit to the data (Armitage, 1977). The logistic model assumes that the data have a binomial distribution (*e.g.,* presence or absence of PMF) for a given set of covariate values (*e.g.,* age, coal rank, dust exposure, pack-years of smoking). Using logistic modeling, relationships were developed between cumulative dust exposure and prevalence of simple CWP (category 1+, category 2+) and PMF. These relationships were the key strengths of the Attfield and Seixas study and serve as the basis for the Quantitative Risk Assessment of this rule.

The recent paper of Kuempel, *et al.* (1997) has provided a detailed discussion and quantitative presentation of excess risks associated with respirable coal dust exposures. Their study was based upon results from previous studies of some 9,000 underground coal miners who participated in the NSCWP (Attfield and Morring, 1992b; Attfield and Seixas, 1995). Kuempel, *et al.* estimated excess (exposure-attributable) prevalence of simple CWP and PMF (*i.e.,* number of cases of disease present in a population at a specified time, divided by the number of persons in the population at that specified time). Point estimates of excess risk of PMF ranged from 1/1000 to 167/1000 among miners exposed at the current MSHA standard for respirable coal mine dust. These estimates were based upon dust exposure that occurred over a miner's working lifetime (*e.g.,* 8 hours per day, 5 days a week, 50 weeks per year, over a period of 45 years). Actual occupational lifetime exposure may be more, due to extended work shifts and work weeks. The point estimates of PMF presented by Kuempel, *et al.* (1997) were related to coal rank, where higher estimates (*e.g.,* 167/1000) were obtained for high-rank coal (anthracite coal) and somewhat lower estimates were obtained for medium/low rank bituminous coal (*e.g.,* 21/1000). Within each coal rank, the estimates of simple CWP cases were at least twice as high as those for PMF (*e.g.,* 167/1000 PMF vs. 380/1000 simple CWP≥1).

The data of Attfield and Seixas (1995) and Kuempel, *et al.* (1995; 1997) were consistent with previous data of Attfield and Morring (1992b) who reported relationships between estimated dust exposure and predicted prevalence of simple CWP or PMF. They also noted that exposure-response relationships were steeper for higher ranks of coal such as anthracite, and concluded that the risks for anthracite miners appeared to be greater than for miners exposed to lower rank coal dust. Attfield and Morring (1992b) used similar methods as described above (*i.e.,* logistic modeling), but included miners from Round 1 of the NSCWP (1969-1971); thus representing an earlier time point in the NSCWP when the respirable coal mine dust concentrations were much higher than they are today.

Recently, Goodwin and Attfield (1998) reported that there were concerns regarding methodological inconsistencies across surveys given during the four rounds of the NSCWP. In particular, they noted the discordance in classification of simple CWP and PMF among readers of chest films. Despite potential discordance, Goodwin and Attfield (1998) have confirmed previous findings of a decline in simple CWP prevalence from 1969 to 1988. Yet, these analyses also demonstrated that simple CWP has not been eliminated. The Round 4 prevalence rates were 3.9 percent for simple CWP category 1 and higher, and 0.9 percent for category 2 and higher. This illustrates the need for continued efforts to reduce dust exposures.

Given the current system for monitoring exposures and identifying overexposures in the U.S., miners are at

increased risk of developing simple CWP and PMF from a working lifetime exposure to respirable coal mine dust (Kuempel, *et al.* 1997, 1995; Attfield and Seixas, 1995; Goodwin and Attfield, 1998; Attfield and Morring, 1992b). Whenever overexposures (*i.e.*, excursions above the applicable standard) occur, the long-term mean exposure of miners may be increased, thereby causing an upward shift on the exposure-response curve. Such a shift then places these overexposed coal miners at increased risk of developing and dying prematurely from simple CWP and PMF.

The Attfield and Seixas epidemiological study (1995) is the most appropriate to use in estimating the benefit of reduction of overexposures. The authors applied scientific rigor to the collection, categorization, and analyses of the radiographic evidence for the group of 3,194 underground bituminous coal miners who participated in Round 4, 1985–1988, of the National Study of Coal Workers' Pneumoconiosis (NSCWP); this study population excludes 86 miners for whom there was missing exposure data or unreadable x-rays. Radiologic evidence was carefully collected and analyzed by multiple independent, NIOSH certified B readers to identify stages of simple CWP and PMF. In the targeted population of 5,557 miners, the participating miners (3,280) were similar to the non-participants (2,277) with regard to age at the first medical examination and prevalence of simple CWP category 1 or greater. The non-participants had worked slightly longer, yet had lower prevalence of simple CWP category 2 or greater, than the participants. This study describes the differences among current miners and ex-miners (health-related or job-related) in the relationships between the estimated cumulative exposure to respirable coal mine dust and prevalence of simple CWP category 1 or greater. Such data and relationships were not available in other U.S. studies and non-U.S. studies.

A potential limitation in the U.S. studies is the possible bias in the exposure data, which has been the subject of several studies (Boden and Gold, 1984; Seixas *et al.*, 1991; Attfield and Hearl, 1996). An advantage of the Attfield and Seixas 1995 study (and the earlier studies based on the same data set) is that the larger mines included in these epidemiological studies were shown to have exposure data with relatively small bias (Attfield and Hearl, 1996). Another limitation in exposure data used in the U.S. studies is that the airborne dust concentrations used to estimate individual miners' cumulative exposures to respirable coal mine dust were based on average concentrations within job category (these average values were combined with data of each individual miner's duration employed in a given job). The earlier U.S. exposure-response studies of miners participating in the first medical survey of the NSCWP (Attfield and Morring, 1992b; Attfield and Hodous, 1992; Kuempel, *et al.*, 1995) relied primarily on exposure measurements from a dust sampling survey during 1968–1969 to estimate miners' exposures before 1970 (Attfield and Morring, 1992a). An advantage of the Attfield and Seixas 1995 study is that, in addition to the pre-1970 exposure estimates, more detailed exposure data were available to estimate miners' exposures from 1970 to 1987, during which the mean airborne concentrations were stratified by mine, job, and year (Seixas, *et al.*, 1991).

The most complete exposure data available are those for coal miners in the United Kingdom (Hurley, *et al.*, 1987; Hurley and Maclaren, 1987; Soutar and Hurley, 1986; Marine, *et al.*, 1988; Maclaren, *et al.*, 1989). These studies include medical examinations and individual estimates of exposure for more than 50,000 miners for up to 30 years. The U.S. studies are consistent with these U.K. studies in demonstrating the risks of developing occupational respiratory diseases from exposure to respirable coal mine dust. These risks increase with increasing exposure concentration and duration, and with exposure to dust of higher ranked coal. The quantitative assessment of risk and associated benefits were based on the Attfield and Seixas (1995) study because, in addition to the advantages described above, it best represents the recent conditions experienced by miners in the U.S. This quantitative assessment follows in Section VI. The international studies provide an important basis for comparison with the U.S. findings, and several of the recent international studies are described in detail here.

Bourgkard, *et al.* (1998) conducted a 4-year study of a group of French coal miners who were employed in underground and surface mines. The investigators examined the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP and PMF. Bourgkard, *et al.* (1998), through selection of a younger worker population (*i.e.*, 35–48 years old at start of study), attempted to focus on the early stages of simple CWP. In essence, they hoped to identify those miners who needed to be relocated to less dusty workplaces or who needed to be clinically monitored. Bourgkard, *et al.* (1998) concluded that there was an association between cumulative dust exposure and what was termed chest x-ray ''worsening'' (*i.e.*, increase in reader-designated category signifying progression of simple CWP). Their conclusion, however, was based on pooling of the data (*i.e.*, three combined groups of miners) who had different cumulative exposures (*i.e.*, 20, 66 and 85 mg-yr/m^3).

Love, *et al.* (1997, 1992) reported on occupational exposures and the health of British opencast (*i.e.*, surface or strip) coal miners. They studied a group of approximately 1,200 miners who were employed at sites in England, Scotland, and Wales. The mean age of the men was 41; many had worked in the mining industry since the 1970s. To determine dust exposure levels, full shift personal samples were collected. Most were respirable dust samples which were collected using Casella cyclones according to the procedures described by the British Health and Safety Executive (HSE). Thus exposure determinations would be comparable to exposure determinations obtained in U.S. surface coal mines since both measure respirable dust according to the BMRC criteria.

These investigators found a doubling in the relative risk of developing profusion of simple CWP category 0/1 for every 10 years of work in the dustiest jobs in surface mines. These respirable coal dust exposures were under 1 mg/m^3. Love, *et al.* (1992, 1997), like other investigators, emphasized the need for monitoring and controlling exposures to respirable coal mine dust, particularly in high risk operations (*e.g.*, drillers, drivers of bulldozers).

Meijers, *et al.* (1997) studied Dutch coal miners who were examined between 1952 and 1963, and who were followed until the end of 1991. They reported an increased risk of mortality from simple CWP and PMF among miners who had generally worked underground for 20 or more years. Their conclusions were based upon dramatic increases in standardized mortality ratios (SMRs). There were several limitations in this study, however.

Morfeld, *et al.* (1997) published a recent paper that investigated the risk of developing simple CWP in German miners and addressed the occupational exposure limit for respirable coal dust in Germany. Their study included approximately 5,800 miners who worked underground from the late

1970s to mid-1980s. Morfeld, *et al.* observed increases in relative risks (RRs) of developing early x-ray changes, category 0/1, that were exposure-dependent. Relative risks (RRs) increased with higher dust concentrations.

Starzynski, *et al.* (1996) conducted a mortality study on a group of 11,224 Polish males diagnosed with silicosis, simple CWP, or PMF between 1970 and 1985. This cohort was subdivided by occupation into four subcohorts: coal miners (63%); employees of underground work enterprises (8%) (*i.e.,* drift cutting and shaft construction jobs); metallurgical industry and iron, and nonferrous foundry workers (16%); and refractory materials, china, ceramics and quarry workers. The investigators found that coal miners had a slight, statistically significant excess overall mortality (*i.e.,* all causes) as indicated by a Standardized Mortality Ratio (SMR) of 105 (with a 95% Confidence Interval (C.I.) of 100–110). Also, excess of deaths from diseases of the respiratory system among coal miners was nearly four times that of the referent population (SMR of 383 with a 95% C.I. of 345–424). The study of Starzynski, *et al.* (1996) agrees with others that there is premature mortality among coal miners from simple CWP and PMF. Unfortunately, there is little or no information presented on miner work history, exposure assessment (*e.g.,* respirable coal mine dust, silica), and mine environment (*e.g.,* coal rank(s), underground vs. surface mining).

Yi and Zhang (1996) conducted a study to measure the progression from simple CWP to PMF or death among a cohort of 2,738 miners with simple CWP who were employed at the Huai-Bei coal mine in China. Relative risks (*i.e.,* RRs) were calculated for progression from simple CWP category 1 to simple CWP category 3 and for progression from simple CWP category 3 to death. Their results demonstrated that miners with simple CWP category 1 are at risk of developing simple CWP category 2 and simple CWP category 3 (*e.g.,* RRs of 1.101 and 2.360, respectively). They also found that miners with PMF had a decreased life expectancy. Other risk factors for development of PMF included long-term work underground, and drilling. This study was limited by a lack of exposure assessment, estimation of miner smoking histories, and use of a radiological classification system that differs from that of the ILO.

Hurley and Maclaren (1987) studied British coal miners who were examined between 1953 and 1978, over 5-year intervals. They have shown that exposure to respirable coal dust increases the risks of developing simple CWP and of progressing to PMF. As seen in their data analysis, these responses were dependent upon dust concentration and coal rank. That is, greater responses were seen at higher dust concentrations and with higher rank coal (*i.e.,* increasing per cent carbon. The investigators also noted that estimated risks were unaffected by changes in the proportion of miners with simple CWP who transferred jobs. The authors concluded that ''limiting exposure to respirable coal dust is the only reliable way of limiting the risks of radiological changes to miners.''

b. *Other Health Effects.* As noted in Table V–1, there were 16 studies in which the loss of lung function (LLF) was examined in coal miners. Six of these studies also included an evaluation of respiratory symptoms (RS) in the miners. There were five studies describing chronic obstructive pulmonary disease (COPD) in miners.

Henneberger and Attfield (1997; 1996), Kuempel, *et al.* (1997), Seixas, *et al.* (1993), Attfield and Hodous (1992), and Seixas, *et al.* (1992) evaluated data from pulmonary function tests and standardized questionnaires to miners in the NSCWP. A common finding in their studies was an increase in respiratory symptoms such as cough, shortness of breath, and wheezing. The symptoms were dependent upon the dust concentration to which the miners had been exposed, with more pronounced symptoms occurring after long-term exposures to higher exposure levels. These studies also demonstrated that a loss of lung function occurred among miners.

Attfield and Hodous (1992) studied U.S. miners who had spent 18 years underground (on average) and who participated in Round 1 (1969–1971) of the NSCWP. They observed that greater reductions in pulmonary function were associated with exposure to higher ranks of coal (*i.e.,* anthracite vs. bituminous vs. lignite). Using linear regression models, Kuempel *et al.,* (1997) predicted the excess (exposure attributable) prevalence of lung function decrements among miners with cumulative exposures to respirable coal mine dust of 2 mg/m^3 for 45 years (*i.e.,* 90 mg-yr/m^3). The excess prevalence estimated were 315 and 139 cases per thousand for forced expiratory volume in one second (FEV_1) of <80% and <65% of predicted normal values, respectively, among never-smoking miners (a sub-group of 977 NSCWP participants studied in Seixas *et al.,* 1993). Such reductions in (FEV_1 are clinically significant; (FEV_1 <80% (of predicted normal values) is a measure that is used to determine ventilatory defects (American Thoracic Society, 1991). Three recent studies found impaired (FEV_1 to be a predictor of increased pre-mature mortality (Weiss, *et al.,* 1995; Meijers, *et al.,* 1997; Hansen *et al.,* 1999).

Seixas, *et al.* (1993) conducted an analyses of 977 underground coal miners who began working in or after 1970 and were participants of both NSCWP Round 2 (1972–1975) and Round 4 (1985–1988). They found a rapid loss of lung function in miners and further declines in lung function with continuing exposure to coal mine dust. Collectively these studies have shown that the prevalence of decreased lung function was proportional to cumulative exposure. That is, with exposure to higher coal dust levels over a working lifetime, there were more miners who experienced a loss of lung function. Also, the types of respiratory symptoms and patterns of pulmonary function decrements observed by both Attfield and Hodous (1992) Seixas, *et al.* (1992;1993) are characteristic of COPD.

The U.S. findings on respiratory symptoms and loss of lung function in miners have agreed with those of previous British studies by Marine, *et al.* (1988) and Soutar and Hurley (1986). Marine, *et al.* (1988) analyzed data from British coal miners and focused their attention on respiratory conditions other than simple CWP and PMF. In particular, they examined the Forced Expiratory Volume in one second (FEV_1) among smoking and nonsmoking miners and, on the basis of reported respiratory symptoms, identified those miners with bronchitis. Using these data, logistic regression models were used to estimate the prevalence of chronic bronchitis and loss of lung function. Marine, *et al.* concluded that both exposure to respirable coal mine dust and smoking independently cause decrements in lung function; their contributions to COPD appeared to be additive in coal miners.

Soutar and Hurley (1986) examined the relationship between dust exposure and lung function in British coal miners and ex-miners. The men who were studied were employed in coal mines in the 1950s and were followed up and examined 22 years later. These miners and ex-miners were categorized as smokers, ex-smokers, or nonsmokers. The Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and the (FEV_1/FVC) ratios decreased in all study groups and these reductions in lung function were inversely proportional to dust exposure. Thus, Soutar and Hurley concluded that exposure to respirable coal mine dust can cause severe respiratory

impairment, even without the presence of simple CWP or PMF. They speculated that the pathology of coal dust-induced lung disease differs from that induced by smoking.

Recent studies from China (Wang, *et al.,* 1997) and the European community (Bourgkard, *et al.,* 1998; Carta, *et al.,* 1996; Lewis, S., *et al.,* 1996) have also supported the British and U.S. findings which demonstrated the correlation between occupational exposure to coal dust and respiratory symptoms and loss of lung function in miners.

Wang, *et al.* (1997) examined lung function in underground coal miners and other workers from several other factories in Chongqing, China. For their study, information was obtained on exposure duration, results of radiographic tests, and smoking history. Pulmonary function tests were performed, providing the Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and (FEV_1/FVC) data. Additionally, the diffusing capacity for carbon monoxide (DL_{CO}) was measured. This is an indicator of diffusion impairment at the ''blood-gas barrier'' which may occur, for example, when this barrier becomes thickened (West, 1990; 1992). Wang, *et al.* (1997) found that there was impairment of pulmonary function among the coal miners and they had evidence of obstructive disease. Like other studies, such effects were observed among coal miners even in the absence of simple CWP. Pulmonary function was further decreased when simple CWP was present. This study did not provide exposure measurements and there was no consideration of exposure-response relationships. Also, silica exposures and their potential effects were not examined in the underground coal miners.

As noted above, Bourgkard, *et al.* (1998) was interested in the earlier stages of simple CWP (*i.e.,* Categories 0/1 and 1/0) and the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP category 1/1 or higher. Over a 4-year period, they studied French coal miners who were employed in underground and surface mines. Bourgkard, *et al.* (1998) found that, at the first medical examination, the ratio of the Forced Expiratory Volume in one second (FEV_1) to the Forced Vital Capacity (FVC) (*i.e.,* (FEV_1/FVC) and other airflows determined from a forced expiration (West, 1990; 1992) were lower among miners who later developed simple CWP category 1/1 or higher. These miners also experienced more wheezing at the first medical examination. Thus, the results of their study suggested that lung function changes may serve as an early indicator of miners who are at increased risk of developing simple CWP and PMF and who should be monitored more closely.

Carta, *et al.* (1996) have examined the role of dust exposure on the prevalence of respiratory symptoms and loss of lung function in a group of young Italian coal miners (*i.e.,* mean age at hire 28.9 years, mean age at first survey 31.2 years). These miners worked underground and were exposed to lignite (*i.e.,* low rank coal) which had a 5–7% sulfur content. They were followed for a period of 11 years, from 1983 and 1993. Carta, *et al.* (1996) found few abnormalities on miner chest x-rays taken throughout the 11-year study. However, there was an increased prevalence of respiratory symptoms and loss of lung function. This was particularly noteworthy since dust exposures were often below 1.0 mg/m^3; the cumulative dust exposure for the whole cohort was 6.7 mg-yr/m^3 after the first survey. Thus, Carta, *et al.* (1996) demonstrated that miners experience respiratory effects of exposure to dust generated from a lower rank coal and at lower concentrations. They have recommended yearly measurements of lung function for miners.

Lewis, *et al.* (1996) studied a group of British miners, many of whom entered the coal industry in the 1970s. Based upon chest x-rays, the miners had no evidence of simple CWP or PMF. The objective of this study was to determine whether coal mining (*i.e.,* exposure to respirable coal mine dust) is an independent risk factor for impairment of lung function. Lewis, *et al.* (1996) found that there was a loss of lung function in miners (smokers and nonsmokers), particularly among miners who were under approximately 55 years of age. For miners who smoked, there was a greater loss of lung function than in nonsmoking miners with the same level of exposure to respirable coal mine dust. Above age 55, the loss of lung function was similar for miners and their controls, although all smokers continued to exhibit a greater loss of lung function than nonsmokers. Lewis, *et al.* (1996) concluded that the deficits in lung function may occur in the absence of simple CWP and PMF, and independent from the effects of smoking.

There have been two recent mortality studies that have demonstrated a relationship between exposure to respirable coal mine dust and development of COPD. This association was reported by Kuempel, *et al.* (1995) in the U.S., and by Meijers, *et al.* (1997) in the Netherlands. These two groups of investigators have reported that occupationally-induced COPD (*e.g.,* chronic bronchitis, emphysema) can occur in miners, with or without the presence of simple CWP or PMF. They also found that the risk of premature mortality from COPD was elevated among miners and could be separated from the effects of smoking and age.

Kuempel, *et al.* (1995) found an increase in relative risk (RR) of premature mortality from COPD among U.S. coal miners who participated in the NSCWP from 1969 through 1971. In their data analysis, the exposure-response relationship was evaluated using the Cox proportional hazards model. This model assumes that the hazard ratio between nonexposed and exposed groups does not significantly change with time. When fitting a curve to the data (*e.g.,* log-linear), cumulative exposure was expressed as a categorical or continuous variable. Due to model limitations (*e.g.,* less statistical power, influence of category scheme, use of lowest exposure group for comparisons vs. use of non-exposed group), Kuempel, *et al.* (1995) believed that the exposure data should be expressed as a continuous variable. If, for example, the cumulative exposure was 90 mg-yr/m^3 (*i.e.,* 2 mg/m^3 for 45 years), then the relative risk of mortality from chronic bronchitis or emphysema was 7.67. Kuempel, *et al.* (1995) also showed that relative risk decreased with lower cumulative exposures (*i.e.,* below 90 mg-yr/m^3) and increased with higher cumulative exposures (*i.e.,* above 90 mg-yr/m^3). Thus, these investigators demonstrated a statistically significant exposure-response relationship for COPD.

Meijers, *et al.* (1997) have shown, among Dutch miners, reductions in lung volumes and capacities are good predictors of the increased risk of premature mortality from COPD. For example, a diminished forced expiratory volume in one second (FEV_1) or a diminished ratio of the FEV_1 to the forced vital capacity [10] (FVC) (*i.e.,* FEV_1/FVC) upon medical examination was associated with a significantly increased standardized mortality ratio (SMR) for COPD (322 and 212, respectively). In other words, miners with diminished lung capacity based on FEV_1 were two to three times more likely to die prematurely due to COPD than miners who had normal lung function. In contrast, SMRs for COPD were not

[10] Forced vital capacity (FVC) is the total volume of gas that can be exhaled with a forced expiration after a full inspiration; The vital capacity measured with a FVC may be less than that measured with a slower exhalation (West, 1992).

significantly increased in miners with normal lung volumes and capacities. These data support prior conclusions of Seixas, *et al.* (1992, 1993) and Attfield and Hodous (1992) based on morbidity studies.

VI. Quantitative Risk Assessment

As mentioned previously, in addition to this proposed notice of rulemaking, today's **Federal Register** contains another NPRM, Determination of Concentration of Respirable Coal Mine Dust, RIN 1219–AB18. In combination, these rules present MSHA's strengthened plan to meet the Mine Act's requirement that a miner's exposure to respirable coal mine dust be at or below the applicable standard on each and every shift. MSHA's improved program to eliminate overexposures on each and every shift includes the simultaneous implementation of an improved tool to identify overexposures (*i.e.,* inspectors use of single, full–shift samples for noncompliance determinations) and this proposed regulation, requiring operators to verify ventilation plans in underground coal mines.

Having reviewed the reported health effects associated with exposure to coal mine dust, we have evaluated the evidence to determine whether the current regulatory strategy can be improved. The criteria for this evaluation is established by the Mine Act under section 101(a)(6)(A) [30 U.S.C. 811(a)(6)(A)] which provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on Court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that must be addressed: (1) Whether health effects associated with the current pattern of overexposures on individual shifts constitute a material impairment to miner health or functional capacity; (2) whether the current pattern of overexposures on individual shifts places miners at a significant risk of incurring any of these material impairments; and (3) whether the proposed rules would substantially reduce those risks.

The criteria for evaluating the health effects evidence do not require scientific certainty. The need to evaluate risk does not mean that an agency is placed into a ''mathematical straightjacket.'' *See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607, 100 S.Ct 2844 (1980), otherwise known as the ''Benzene'' decision. When regulating on the edge of scientific knowledge, certainty may not be possible and,

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * * risking error on the side of overprotection rather than underprotection (Id at 656).

The statutory criteria for evaluating the health evidence do not require MSHA and NIOSH to wait for absolute certainty and precision. MSHA and NIOSH are required to use the ''best available evidence'' (section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)).

As explained earlier, MSHA's objective in strengthening the requirements for verifying the effectiveness of dust control plans, and in enforcing effective plans through the new enforcement policy proposed in this notice, is to ensure that no miner is exposed to an excessive concentration (*i.e.*, a concentration in excess of the applicable standard) of respirable dust on any individual shift. Annual inspector samples have demonstrated overexposures on individual shifts in many mines. Data compiled from the far more frequent, bimonthly, operator sampling program show that in many mines, the applicable dust standard is exceeded on a substantial percentage of the production shifts. This pattern has persisted for many years, and, since individual shift excursions above the applicable standard are permitted under the existing program, the same pattern can be expected to continue over the working lifetime of affected miners—unless an effort is made to eliminate excess exposures on individual shifts. In this quantitative risk assessment (QRA), MSHA will demonstrate that reducing coal mine dust concentrations, over a 45-year occupational lifetime, to no more than the applicable standard on just that percentage of shifts showing an excess, thereby lowering the cumulative exposure to respirable coal mine dust than would otherwise occur, would significantly reduce the risk of both simple CWP and PMF among miners. We have estimated the health benefits of the two rules arising from the elimination of overexposures on all shifts at only those MMUs exhibiting a pattern of recurrent overexposures on individual shifts.[11]

Based on 1999 operator data, there were 704 MMUs (out of 1,251 total) at which dust concentrations for the designated occupation (DO) exceeded the applicable standard on at least two of the sampling shifts (MSHA, Datafile:Operator.ZIP).[12, 13] MSHA considers these 704 MMUs, representing more than one-half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures. Valid operator DO samples were collected on a total of 18,569 shifts at these 704 MMUs, and the applicable standard was exceeded on 3,977 of these shifts, or 21.4 percent. For this 21.4 percent, the mean excess above the standard, as measured for the DO only, was 1.04 mg/m^3.

These results are based on a large number of shifts (an average of approximately 26 at each of the 704 MMUs). Therefore, assuming representative operating conditions on these shifts, the results can be extrapolated to all production shifts, including those that were not sampled, at these same 704 MMUs. With 99-percent confidence, the overall percentage of production shifts on which the DO sample exceeded the standard was between 20.6 percent and 22.2 percent for 1999. At the same confidence level, again assuming representative operating conditions, the overall mean excess on noncompliant shifts at these MMUs was between 0.96 mg/m^3 and 1.12 mg/m^3. If operators tend to reduce production and/or increase dust controls on sampled shifts (as some commenters to the previous single, full-shift sample rulemaking and the Dust Advisory Committee have alleged) then the true values could be

[11] By ''exhibiting a pattern of recurrent overexposures,'' MSHA means that, at a 95-percent confidence level, the applicable standard is exceeded on at least [six] shifts per year. Using a different definition of ''recurrent pattern of overexposures'' in these analyses would change the estimate of the reduction in risk and associated benefits. For example, if the definition were that four or more DO bimonthly exposure measurements exceeded the applicable standard, we could state, with 95% confidence, that the standard was exceeded on at least 20 shifts in a year of 384 shifts. This would reduce the population for whom we are estimating benefits, and decrease the estimated number of prevented cases by 19%.

[12, 13] MSHA estimates an MMU average of 384 production shifts per year. Since mine operators are required to submit five valid designated operator (DO) samples to MSHA every two months, there would typically be 30 valid DO samples—representing 30 of the 384 production shifts—for each MMU that was in operation for the full year. If dust concentrations on two or more of the sampled shifts exceeded the standard, then it follows, at a 95-percent confidence level, that the standard was exceeded on at least [six] shifts over the full year.

higher than the upper endpoints of these 99-percent confidence intervals.

In 1998, MSHA attempted to enforce compliance on individual shifts. Therefore, to compare the 1999 pattern of excess exposures on individual shifts to that of previous years under the current enforcement policy, MSHA examined the regular bimonthly DO sample data submitted to MSHA by mine operators in the eight years from 1990 through 1997. The same three parameters were considered as discussed above for 1997: (1) The percentage of MMUs exhibiting a pattern of recurrent overexposures, as indicated by at least two of the valid measurements above the applicable standard in a given year; (2) for those and only those MMUs exhibiting recurrent overexposures, the overall percentage of production shifts on which the DO was overexposed, as estimated by the percentage of valid measurements above the applicable standard; and (3) for the MMUs identified as exhibiting recurrent overexposures, the mean excess above the applicable standard, as calculated for just those valid measurements that exceeded the applicable standard in a given year.

Although MSHA found minor differences between individual years, there was no statistically significant upward or downward trend in any of these three parameters over the 1990–1997 time period (see Table VI–1). In 1999, however, there was a significant decrease in the average excess above the applicable standard (Parameter #3) for MMUs exhibiting recurrent overexposures. MSHA attributes this decrease to two important changes in the Agency's inspection program, beginning near the end of 1998. These changes, which both resulted in increased inspector presence, were: (1) An increase in the frequency of MSHA dust sampling at underground coal mines; and (2) initiation of monthly spot inspections at mines that were experiencing difficulty in maintaining consistent compliance with the applicable dust standard.

TABLE VI–1.—1990–1997, DISTRIBUTION OF PARAMETERS OF ANNUAL OVEREXPOSURE TO RESPIRABLE COAL MINE DUST

1990–1997	Parameter #1 (percent)	Parameter #2 (percent)	Parameter #3 (mg/m^3)
Number of Years	8	8	8
Median	52.6	20.5	1.23
Mean (Standard Error)	50.9 (1.62)	20.6 (0.32)	1.25 (0.020)

Parameter #1: Percentage of MMUs exhibiting a pattern of recurrent overexposures.
Parameter #2: For those MMUs exhibiting a pattern of recurrent overexposures, the percentage of production shifts on which the DO was overexposed.
Parameter #3: For those MMUs exhibiting a pattern of recurrent overexposures, the mean excess above the applicable standard among valid DO measurements that exceeded the applicable standard.

MSHA invites public comment on whether these three parameters, based on operators' 1999 samples, under-represent or over-represent the frequency and/or magnitude of excessive dust concentrations on *all* individual shifts—including those that are not sampled. These data suggest that, unless changes are made to enforce the dust standard on every shift, the same average pattern of overexposures observed in 1999 will persist into the future. Therefore, we conclude that without the proposed changes:

- Approximately 56 percent of all MMUs would continue to have a pattern of recurrent overexposures on individual shifts;
- At those MMUs with recurrent overexposures, full shift average respirable dust concentrations for the DO would continue to exceed the applicable standards on about 21 percent of all production shifts;
- Among those shifts on which DO exposure exceeds the applicable standards, the mean excess for the DO would continue to be *approximately* 1.0 mg/m^3.

If all overexposures on individual shifts are eliminated, the reduction in total respirable coal mine dust inhaled by a miner over a working lifetime will depend on the following factors: the average volume of air inhaled on each shift that would otherwise have exceeded the applicable standard, the degree of reduction in respirable dust concentration in the air inhaled on such shifts, and the number of such shifts per working lifetime. If a miner inhales ten cubic meters of air on a shift (U.S. EPA, 1980), reducing the respirable dust concentration in that air by 1.0 mg/m^3 would result in 10 mg less dust inhaled on that shift alone. Assuming the miner works 240 shifts per year, then reducing inhaled respirable dust by an average of 10 mg on 21 percent of the shifts would reduce the total dust inhaled by 504 mg per year, or nearly 22,700 mg over a 45-year working lifetime:

1.0 mg per m^3 of inhaled air
× 10 m^3 inhaled air per shift
× 50.4 affected shifts (*i.e.*, 21% of 240) per work year
× 45 work years per working lifetime
= 22,680 mg less dust inhaled per working lifetime.

The Secretaries invite comments on the health benefits expected from reducing the total coal mine dust inhaled over a working lifetime by this amount.

In Section V, the strengths and weaknesses of various epidemiological studies were presented, supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material health impairment with respect to CWP and PMF. Two of the distinguishing qualities of this study are the dose-response relationship over a miners' lifetime and the fact that these data best represent the recent conditions experienced by miners in the U.S. Using this relationship it is possible to evaluate the impact on risk of both simple CWP and PMF expected from bringing dust concentrations down to or below the applicable standard on every shift. This is the only contemporary epidemiological study of CWP and PMF providing such a relationship.

Attfield and Seixas used two or three B readers to identify the profusion of opacities using the ILO classification scheme. If three readings were available, the median value was used. If two readings were available, the higher of the two ILO categories was recorded. Eighty radiographs were eliminated because only one reading was available. The most inclusive category of CWP 1$^+$ includes simple CWP, categories 1, 2, 3, as well as PMF. Category CWP 2$^+$ does not include simple CWP, category 1, but does include the more severe simple

CWP categories, 2 and 3, as well as PMF. The third category used in their report was PMF, denoting any category of large opacities.

Attfield and Seixas (1995) provided logistic regression models for the prevalence for CWP 1^+, CWP 2^+ and PMF as a function of cumulative dust exposure, expressed as the product of dust concentration measured in the mine atmosphere and duration of exposure at that concentration. These models can be used to estimate the impact on miners' risk of both simple CWP and PMF of reducing lifetime accumulated exposure by eliminating excessive exposures on a given percentage of individual shifts.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures), bringing dust concentrations down to no more than the applicable standard on each and every production shift would reduce DO exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 21 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the DO level, by 0.22 mg-yr/m^3 over the course of a working year (*i.e.*, 21 percent of shifts in one year, times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected miner would, on average, amount to a reduction in accumulated exposure of approximately 10 mg-yr/m^3 (*i.e.*, 45 years times 0.22 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples submitted to MSHA tend to under-represent either the frequency or magnitude (or both) of individual full shift excursions above the applicable standard, then eliminating such excursions would provide a lifetime reduction of even more than 10 mg-yr/m^3 for each exposed miner.

The Attfield and Seixas models predict the prevalence of CWP 1^+, CWP 2^+, and PMF for miners who have accumulated a given amount of exposure, expressed in units of mg-yr/m^3, by the time they attain a specified age. Benefits of reducing cumulative exposure can be estimated by calculating the difference between predictions with and without the reduction. For example, suppose a miner begins work at age 20 and retires at age 65. By the year of retirement, that miner is expected to accumulate nearly 10 mg-yr/m^3 less exposure if individual shift excursions are eliminated. For 65-year-old miners, reducing accumulated dust exposure by a total of 10 mg-yr/m^3 reduces the predicted prevalence of CWP 1^+ by at least 11 per thousand (See Table VI–2).

This 11 per thousand, however, applies only to miners of age 65. The Attfield and Seixas models provide different predictions for each year of age that a miner attains. The predicted benefit turns out to be smaller for younger miners and larger for older miners. This is partly because younger miners will have accumulated less exposure reduction from the proposed changes, and partly because the Attfield and Seixas models depend directly on age as well as on cumulative exposure. The health effects of recurrent overexposures can occur long after the overexposures occurred. Even after a miner retires and is no longer exposed to respirable coal mine dust, the extra risk attributable to an extra 10 mg-year/m^3, accumulated earlier, continues to increase with age. Consequently, the benefit to be gained from eliminating individual shift excursions also continues to increase after a miner is no longer exposed. For example, assuming no additional exposure after age 65, the predicted reduction in average prevalence of CWP1^+ increases from 12 per thousand at age 65 to 17 per thousand at age 70. Presumably, the increasingly greater predicted reduced risk of disease after age 65 is due to the latent effects of the reduction in earlier exposure.

To project the benefits of the two rules expected from eliminating overexposures on individual shifts, MSHA applied the Attfield and Seixas models to a hypothetical population of miners who, on average, begin working at age 20 and retire at age 65, assuming different lifetimes. The risks for three different ages have been presented to show a range of risk depending on the lifetime: 65, 73, and 80 years. During the 45 ''working years'' between 20 and 65, the lifetime benefit accumulates at a rate of 0.22 mg-yr/m^3 of reduced exposure per year, reaching a maximum of about 10 mg-yr/m^3 at age 65. Between ages 65 and 80, the accumulated reduction in dust exposure remains at an estimated average of 10 mg-yr/m^3, but the benefit in terms of both simple CWP and PMF risk continues to increase, as explained previously.

The expected lifetime for all American males conditional on their having reached 20 years of age, is 73 years (calculated from: U.S. Census March 1997, Table 18; U.S. Census March 1997, Table 119).[14] On average, the best estimate of the lifetime benefit to exposed miners is expressed by the reduction in prevalence of disease at age 73. Carrying out the calculation at a 73-year average lifetime, MSHA expects that, at the MMUs under consideration, bringing dust concentrations down to no more than the applicable standard on each shift will:

- Reduce the combined risk of simple CWP and PMF by at least 18 cases per 1000 affected DO miners; [15]
- Reduce the combined risk of simple CWP (category 2 and 3) and PMF by at least 9.8 cases per 1000 affected DO miners;
- Reduce the risk of PMF by at least 5.1 cases per 1000 affected DO miners.

Presented in the first row of Table VI–2 are the average reductions in risk for simple CWP and PMF combined, and PMF alone, over an occupational lifetime, among affected DO miners who live to ages 65, 73, and 80, who have worked at an MMU exhibiting a pattern of recurrent overexposures. Across health outcomes, the benefit due to the predicted reduction in cumulative exposure to respirable coal mine dust, through limiting miners' exposure to no more than the applicable standard on each and every shift, increases with age.

When the dust concentration measured for the DO exceeds the applicable standard, measurements for at least some of the other miners may also exceed the standard on the same shift, though usually by a lesser amount. Furthermore, although the DO represents the occupation most likely to receive the highest exposure, other miners working in the same MMU may be exposed to even higher concentrations than the DO on some shifts. Therefore, in addition to the affected DO miners, there is a population of other affected miners who are also expected to experience a significant reduction in risk as a result of eliminating overexposures on their individual shifts.

To estimate how many miners other than the DO would be substantially affected, MSHA examined the results from all valid dust samples collected by MSHA inspectors in underground MMUs during 1999 (MSHA, Data file: Inspctor.zip). Within each MMU, the inspector typically takes one full-shift sample on the DO and, on the same shift, four or more additional samples representing other occupations. On 896 shifts, at a total of 450 distinct MMUs, the DO measurement exceeded the applicable standard and there were at least four valid measurements for other

[14] Since females have a greater life expantancy than males, expected benefits would increase if the production of female miners were to increase substantially in the future.

[15] ''affected DO miners'' include all miners who work at the 56-percent of MMUs under consideration and who are exposed to dust concentrations similar to the DO over a 45-year working lifetime.

occupations available for comparison. There was an average of 1.2 non-DO measurements in excess of the standard on shifts for which the DO measurement exceeded the standard.[16] For non-DO measurements that exceeded the standard on the same shift as a DO measurement, the mean excess above the standard was approximately 0.8 mg/m^3.[17]

Combining these results with the 21-percent rate of excessive exposures observed for the DO on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1.2 other miners, in addition to the one classified as DO, is overexposed on at least 21 percent of all production shifts. Over the course of a working year, the reduction in exposure expected for these other miners is 0.17 mg-yr/m^3 (*i.e.*, 21 percent of one year, times 0.8 mg/m^3).

To assess the reduction in risk expected from eliminating all single-shift exposures for faceworkers experiencing lower exposures than the DO, MSHA again applied the Attfield and Seixas models to miners who begin working at age 20, retire at age 65, assuming various lifetimes: 65, 73, and 80 years. This time, however, the resulting decrease in predicted prevalence was multiplied by 1.2/7=0.171, to reflect the fact that the assumed rate of overexposure applies, on average, to about 17 percent of the faceworkers not classified as the DO.[18]

In the second row of Table VI–2, we see that over an occupational lifetime, the beneficial average reduction in risk for simple CWP and PMF combined, and for PMF alone, increases with age. However, the magnitude of the risk reduction is smaller for the affected non-DOs than the affected DOs. This is expected because the estimated probability that a non-DO will be overexposed on a given shift is only 17 percent of the corresponding probability for the DO. Based on this calculation for the MMUs under consideration, the predicted reduction in risk for faceworkers other than the DO who live an expected lifetime of 73 years is at least: 2.3 fewer cases of PMF or simple CWP per thousand affected miners; 1.3 fewer cases of PMF or simple CWP, categories 2 or 3, per thousand affected miners; and 0.7 fewer cases of PMF per thousand affected miners.

Various data, assumptions and caveats were used to conduct the quantitative risk assessment and benefits analyses. Therefore, we request any information which would enable us to conduct more accurate analyses of the estimated health benefits of the single, full-shift sample rule and plan verification rule, both individually and in combination.

TABLE VI–2.—BY AGE, AVERAGE REDUCTION IN RISK OF OCCUPATIONAL RESPIRATORY DISEASE PER 1,000 AFFECTED UNDERGROUND COAL MINERS EXPECTED TO RESULT FROM IMPLEMENTATION OF SINGLE, FULL-SHIFT SAMPLE AND PLAN VERIFICATION

Type of miner	Reduction in risk of occupational respiratory disease per 1,000 affected miners								
	Simple CWP,[a] (categories 1, 2 or 3) or PMF[b]			Simple CWP (categories 2 or 3) or PMF			PMF		
	Age			Age			Age		
	65	73	80	65	73	80	65	73	80
Affected Designated Occupation Miners[c]	11.0	18.0	25.0	3.7	9.8	21.0	1.8	5.1	12.0
Affected Non-Designated Occupation Miners[d]	1.4	2.3	3.3	0.5	1.3	2.7	0.2	0.7	1.5

[a] Simple CWP: Simple coal workers' pneumoconiosis.
[b] PMF: Progressive massive fibrosis.
[c] Affected Designated Occupation (DO) Miners: Includes all miners who work at the 56-percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the DO, over a 45-year occupational lifetime.
[d] Affected Non-Designated Occupation (Non-DO) Miners: Includes all underground faceworkers under consideration who are not classified as the DO.

VII. Significance of Risk

The criteria for evaluating the evidence to determine whether these proposed standards improve the regulatory strategy for controlling exposures to respirable coal mine dust are established by the Mine Act pursuant to section 101(a)(6)(A) (30 U.S.C. 811(a)(6)(A))which provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on Court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that must be addressed: (1) Whether health effects associated with the current pattern of overexposures on individual shifts constitute a material impairment to miner health or functional capacity; (2) whether the current pattern of overexposures on individual shifts places miners at a significant risk of incurring any of these material impairments; and (3) whether the proposed rules would substantially reduce those risks.

The statutory criteria for evaluating the health evidence do not require MSHA to wait for absolute certainty and precision. MSHA is required to use the ''best available evidence'' (section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)). The need to evaluate risk does not mean that an agency is placed into a ''mathematical straightjacket.'' *See Industrial Union Department, AFL-CIO* v. *American Petroleum Institute,* 448 U.S. 607, 100 S.Ct 2844 (1980), otherwise known as the ''Benzene'' decision. When regulating on the edge of scientific knowledge, certainty may not be possible and,

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data . . . risking error on the

[16] With 95-percent confidence, on shifts for which the DO measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 1.11.

[17] With 95-percent confidence, the mean excess is at least 0.72 mg/m^3.

[18] There are an estimated 7 non-DO miners for each DO miner, and an average of 1.2 of these 7 miners are overexposed.

side of overprotection rather than underprotection (Id at 656).

We have taken steps in our quantitative risk assessment to conduct a balanced analysis using available data. Some of our assumptions were conservative, others were not.[19]

In identifying the number and percentage of MMUs exhibiting a pattern of recurrent overexposures on individual shifts we chose to include only those MMUs with two or more 1999-operator bimonthly samples in excess of the applicable standard, rather than the population of MMUs with any overexposures.[20] Also, the Quantitative Risk Assessment estimates of reduction in risk are averages across MMUs exhibiting a pattern of recurrent overexposures. For those miners who work at mines exhibiting a pattern of recurrent overexposures which differs from the one applied in the Quantitative Risk Assessment, their reduction in risk would be more than or less than the expected average, depending on whether or not their overexposures are at a higher or lower than average rate and intensity.

Another important decision impacting choice in this risk assessment involves the use of the traditional coal miner work schedule of 48-weeks per year. Many of today's miners work longer hours per day, month, and year than the traditional work schedule. These longer work hours increase miners' cumulative exposure to respirable coal mine dust beyond the parameters of exposure used in our estimates of risk. Even so, to the extent that a proportion of miners may have a more limited work schedule (and occupational exposure), either in number of years, weeks per year, or hours per week, their expected benefit would have to be adjusted downward, all other variables being constant.

Also, because of heavy, physical work, some miners may work at ventilatory rates in excess of the above-cited 10 cubic meters per 8-hour shift; an estimate of this ventilatory rate is 13.5 cubic meters per 8-hour shift (ICRP, 1994). The sub-population of miners with higher breathing rates would inhale more respirable coal mine dust than would otherwise occur given the same environmental exposures, thereby increasing their risks for the development of simple CWP and PMF.

In the QRA, to estimate average reduction in exposure, we chose the best available data sets: 1999 operator bimonthly samples for DOs and NDOs, respectively. Currently, both operator bimonthly and inspector samples[21] may be taken on production shifts that may not reflect typical production levels.[22] Although other factors may mediate the amount of airborne respirable dust such as, ventilation and water sprays, on average, higher production is correlated with increased quantities of airborne respirable coal mine dust (Webster, *et al.,* 1990; Haney, *et al.,* 1993; O'Green, *et al.,* 1994). Some previous commenters and the Dust Advisory Committee have alleged that operators tend to reduce production and/or increase dust controls on sampled shifts. To the extent that our values underestimate the true reduction in respirable coal mine dust exposures, we have underestimated the benefits of these rules.

Based on MSHA's and NIOSH's experience and expertise, and previous comments, we believe the production levels observed on sampling shifts are indeed lower than typical (See discussion in Benefits section). We also believe at some MMUs, more engineering controls at higher levels of efficacy are used during sampling shifts than on the majority of shifts (See discussion in Benefits section). Thus, it is reasonable to conclude that the number of MMUs exhibiting a pattern of recurrent overexposures is greater than the 704 captured in this Quantitative Risk Assessment. Furthermore, the severity and rate of overexposures to respirable coal mine dust among the 704 MMUs exhibiting a pattern of recurrent overexposures are probably also greater than we have estimated. We have derived our best estimate of the reduced risk using the best available data. Yet due to limitations in the data, we believe that we have underestimated the magnitude and frequency of typical respirable coal mine exposures. To the extent that our values underestimate the true reduction in respirable coal mine dust exposures, we have underestimated the benefits of these rules.

Other aspects of our risk assessment methodology reflect more conservative choices including the selection of an occupational lifetime of 45-years. Various factors may affect the consistency of the type and duration of jobs miners hold and hence their associated cumulative exposure levels. For example, some miners who lose their jobs upon mine closure are employed by other mines, sometimes in less-exposed jobs. Some miners may chose to move from job to job over their careers at underground coal mines, sometimes preferring positions away from the mining face. Moreover, if the trend of increasing mechanization continues, there will be fewer miners, and for some of them, their occupational lifetimes will be shorter.

For reasons already explained, we believe these choices are appropriate for this risk assessment. We also recognize that use of the most conservative approach at every step of the risk assessment analysis could produce mathematical risk estimates which, because of the additive effect of multiple conservative assumptions, may overstate the likely risk. We believe this QRA for simple CWP and PMF strikes a reasonable balance based on available data. To the extent that we may have underestimated the magnitude of overexposures which would be prevented, we believe the actual benefits to be greater than we have estimated.

It should be noted that reductions in the prevalence of simple CWP and PMF attributable to eliminating individual shift overexposures are not expected to materialize immediately after the overexposures have been substantially reduced or eliminated. Because these diseases typically arise after many years of cumulative exposure, allowing for a period of latency, the beneficial effects of reducing exposures are expected to become evident only after a sufficient time has passed that the reduction in cumulative exposure could have its effect. The total realized benefits would not be fully evident until after the youngest of today's underground coal miners retire.

VIII. Feasibility Issues

Section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)) requires the Secretary of Labor to set standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to such hazards dealt with by

[19] Following terminology used in the Benzene Decision, a ''conservative'' assumption is one that results in more protection for miners than a less conservative assumption. Therefore, estimated benefits are greater under assumptions that are ''conservative'' in this sense.

[20] By ''exhibiting a pattern of recurrent overexposures,'' means that, at a 95-percent confidence level, the applicable standard is exceeded on at least six shifts per year.

[21] Valid MSHA inspector samples require production to be at least 60-percent of the average production for the last 30-days. Valid operator bimonthly samples must be taken on a normal production shift (*i.e.,* a production shift during which the amount of material produced in an MMU is at least 56 percent of the average production reported for the last set of five valid samples) (30 CFR 70.101).

[22] Therefore assuming representative operating conditions on these shifts, in our QRA the results were extrapolated to all production shifts, including those that were *not* sampled, at those same 704 MMUs.

such standard over his or her working lifetime. Standards promulgated under this section must be based upon research, demonstrations, experiments, and such other information as may be appropriate. MSHA, in setting health standards, is required to achieve the highest degree of health and safety protection for the miner, and must consider the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

In relation to promulgating health standards, the legislative history of the Mine Act states that:

> * * * This section further provides that ''other considerations'' in the setting of health standards are ''the latest available scientific data in this field, the feasibility of the standards, and experience gained under this and other health and safety laws.'' While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated.
>
> * * * * *
>
> Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of section 102(a)(5)(A), the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure.

S. Rep. No. 95–181, at 21–22 (1977), *reprinted* in 1977 U.S.C.C.A.N. 3421–22.

In *American Textile Manufacturers' Institute* v. *Donovan,* 452 U.S. 490, 508–509 (1981), the Supreme Court defined the word ''feasible'' as ''capable of being done, executed, or effected.'' The Court further stated, however, that a standard would not be considered economically feasible if an entire industry's competitive structure were threatened. In promulgating standards, hard and precise predictions from agencies regarding feasibility are not required.

A. Technological Feasibility

MSHA believes that the plan verification rule would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA*, (AISI–II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA,* (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dep't., AFL–CIO* v. *Hodgson,* 499 F.2d 467, 478 (D.C. Cir. 1974).

In designing the plan verification rule, MSHA has taken into account its experience and those of the operators to ensure that the rule provides additional protection from occupational exposure to respirable coal mine dust using current compliance technology (while encouraging technological improvements). For this reason, MSHA believes the proposed plan verification rule is technologically feasible. MSHA requires mine operators to utilize all *feasible* engineering or environmental controls, which are specified in the mine ventilation plan, to maintain concentrations of respirable dust in the work environment of MMUs at or below the applicable dust standard. Mine operators therefore would not be required to implement engineering or environmental controls that were not technologically feasible.

Based on its vast experience in the sampling of respirable dust levels in the MMU work environment, MSHA believes that technology is currently available to control respirable dust to levels at or below the applicable level at MMUs employing continuous and conventional methods of mining. However, MSHA recognizes that, unlike other mining systems, longwall MMUs may have acute dust problems caused by the face-ventilation airstream carrying the shearer-generated face dust over the miners working downwind along the face. In these high-production longwall MMUs, improvements in dust control technology have not kept pace with increases in production technology. For this reason, the proposed plan verification rule would allow longwall operators who have trouble in meeting MSHA's respirable dust standard and who have exhausted all feasible engineering and environmental controls to use administrative controls or loose-fitting powered air-purifying respirators (PAPRs), until other feasible controls become available.

B. Economic Feasibility

The plan verification rule would clearly be economically feasible for the underground coal mining industry since the underground coal mining industry would derive net compliance cost savings of approximately $2.04 million yearly from the proposed plan verification rule. (Although implementing the plan verification rule would cost about $4.75 million yearly, there would be the following offsetting yearly savings: $2.19 million from reduced mine operator citations based on results from inspector single, full-shift samples and associated abatement sampling, $1.61 million from reduced mine operator citations on results from operators' bi-monthly samples and associated abatement sampling, $2.73 million from the elimination of operator bi-monthly sampling, and $0.27 million from reduced payouts by mine operators for Black Lung cases.) Underground coal mine operators would also obtain a yearly cost savings of approximately $0.42 million in reduced penalty costs associated with the reduction in mine operator citations arising from the proposed plan verification rule. The proposed plan verification rule would therefore provide a total yearly cost savings of about $2.46 million to the underground coal mining industry.

IX. Regulatory Impact Analysis

MSHA's improved program to eliminate overexposures on each and every shift includes (1) the simultaneous implementation of the use of inspector single, full-shift respirable coal mine dust samples to identify overexposures more effectively in both underground and surface coal mines (single, full-shift sample), and (2) in underground coal mines, verified ventilation plans to maintain miners' respirable dust exposure at or below the applicable standard on each and every shift (plan verification). The single, full-shift sample NPRM is published elsewhere in today's **Federal Register**. This part of the preamble reviews several impact analyses which MSHA is required to provide in connection with the proposed plan verification rulemaking. Since single, full-shift sample and plan verification are complementary NPRMs intended to be promulgated at the same time, the detailed presentation of assumptions and estimates for each are available in the same Preliminary Regulatory Economic Analysis (PREA)(MSHA, January 2000).

Assumptions for the requirements of the plan verification rule are based upon information provided by MSHA technical personnel. We encourage the mining community to provide detailed comments in this regard to ensure that plan verification cost assumptions and estimates are as accurate as possible.

A. Costs and Benefits: Executive Order 12866

In accordance with Executive Order 12866, we have prepared a detailed PREA of the estimated costs and benefits associated with the proposed rule for the underground coal mining sector. We have fulfilled this

requirement for the proposed rule and determined that this rulemaking is not a significant regulatory action. The key findings of the PREA are summarized below.

1. Compliance Costs

The proposed plan verification rule would provide yearly *net* compliance cost savings to underground coal mine operators of about $2.04 million. Although implementing the proposed rule would cost about $4.75 million yearly, there would be offsetting yearly savings of: $2.19 million from reduced mine operator citations issued based on MSHA inspectors' single, full-shift sample results and the elimination of associated underground operator abatement sampling; $1.61 million from reduced mine operator citations issued based on bi-monthly sampling results and the elimination of associated underground operator abatement sampling; $2.73 million resulting from underground operators no longer having to perform bi-monthly operator sampling; and $0.27 million from reduced payouts by mine operators for Black Lung cases.

Table IX–1 summarizes the estimated net compliance costs by provision for underground coal mines, for the following three mine size categories: (1) those employing fewer than 20 workers; (2) those employing between 20 and 500 workers; and (3) those employing more than 500 workers.

In addition to these estimated compliance costs, mine operators would derive yearly penalty cost reductions of about $0.4 million (See Table IX–1(a)). Penalty costs conventionally are not considered to be a cost of a rule (and, in fact, are clearly not a compliance cost) but merely a transfer payment from a party violating a rule to the government. Therefore, the penalty costs are not included as part of the compliance costs of the proposed plan verification rule. These penalty costs are relevant, however, in determining the economic feasibility of the proposed plan verification rule.

The derivation of the above cost figures are presented in Chapter IV of the PREA that accompanies this rule.

TABLE IX–1.—PV COST SUMMARY FOR UNDERGROUND COAL MINE OPERATORS*

Detail	<20 Emp.				≥20 Emp. ≤500				>500 Emp.				Total			
	Adj. first year costs	Annualized costs	Annual costs	Yearly costs [a]	Adj. first year costs	Annualized costs	Annual costs	Yearly costs [a]	Adj. first Year costs	Annualized costs	Annual costs	Yearly Costs [a]	Adj. first year costs	Annualized costs	Annual costs	Yearly costs [a]
UNDERGROUND COAL MINES																
PV Rule:																
Compliance Costs	$1,013,905	$70,973	$346,688	$417,661	$7,599,324	$566,960	$3,285,067	$3,852,027	$749,927	$58,653	$420,105	$478,758	$9,363,156	$696,586	$4,051,860	$4,748,446
Reduced Inspector Citations [b]	$234,374	$16,406	−$534,712	−$518,306	$746,981	$52,289	−$1,658,063	−$1,605,774	$33,603	$2,352	−$71,301	−$68,949	$1,014,958	$71,047	−$2,264,076	−$2,193,029
Reduced Operator Citations [c]	$106,512	$7,456	−$247,790	−$240,334	$596,040	$41,723	−$1,334,380	−$1,292,657	$39,325	$2,753	−$76,901	−$74,148	$741,877	$51,932	−$1,659,071	−$1,607,139
Eliminate Bi–Mo.—Sampling	$0	$0	−$556,538	−$556,530	$0	$0	−$2,057,540	−$2,057,540	$0	$0	−$113,712	−$113,712	$0	$0	−$2,727,790	−$2,727,790
Black Lung Savings	$0	$0	−$32,570	−$32,570	$0	$0	−$217,896	−$217,896	$0	$0	−$15,196	−$15,196	$0	$0	−$265,662	−$265,662
Net PV Rule	$1,354,791	$94,835	−$1,024,922	−$930,345	$8,942,345	$660,972	−$1,982,812	−$1,321,840	$822,855	$63,758	$142,995	$206,753	$11,119,991	$819,565	−$2,864,739	−$2,045,174

*Data from Preliminary Regulatory Economic Analysis Table IV–16, Table IV–63, Table IV–81, Table IV–100, Table IV–105, and Table IV–106. Note that these costs do not include penalty costs, which are shown in Table IX–1(a) in this document.

[a] Yearly costs equals annualized costs plus annual costs.

[b] Reduced costs related to: (1) Reduction in citations issued based on MSHA inspector sample results due to better mine ventilation plans arising from PV rule, and (2) reduction in abatement sampling and associated costs due to elimination of bi-monthly operator sampling.

[c] Reduced costs related to: (1) Reduction in citations issued based on operator sample results due to better mine ventilation plans arising from the PV rule, and (2) reduction in abatement sampling and associated costs due to elimination of operator bi-monthly sampling.

TABLE IX–1(A).—PV ANNUAL PENALTY COST SUMMARY*

[Yearly penalties]

Detail	<20 Emp.	≥20 Emp. ≤500	>500 Emp.	Total
Underground Coal Mines				
PV Rule:				
Reduced Inspector Citations	−$28,468	−$202,334	−$5,263	−$236,065
Reduced Operator Citations	−13,309	−160,956	−4,960	−179,225
Total PV Rule Reduction	−41,777	−363,290	−10,223	−415,290

*Data from Preliminary Regulatory Economic Analysis Table IV–16(a), Table IV–82, and Table IV–101.

2. Benefits

Occupational exposure to excessive levels of respirable coal mine dust imposes significant health risks. These include the following adverse health outcomes: simple coal worker's pneumoconiosis (simple CWP), progressive massive fibrosis (PMF), silicosis, and chronic obstructive pulmonary disease (COPD) (e.g., asthma, chronic bronchitis, emphysema) (See the Health Effects section for details). Cumulative exposure to respirable coal mine dust is the main determinant in the development of both simple CWP and PMF although other factors such as the percentage of quartz in the respirable dust and the type of coal also affect the risk of miners developing simple CWP and PMF (Jacobsen, *et al.,* 1977; Hurley, *et al.,* 1987; Kuempel, *et al.,* 1995; Attfield and Morring, 1992; Attfield and Seixas, 1995). The true magnitude of occupationally induced simple CWP and PMF among today's coal miners is unknown, although prevalence estimates are available from various surveillance systems. For example, from 1970 to 1995, the prevalence of simple CWP and PMF among miners, based on the operator sponsored x-ray program, dropped from 11 percent to 3 percent (MSHA, Internal Chart, 1998). Also, later rounds of the National Study for Coal Worker's Pneumoconiosis consistently demonstrated, through prevalence rates in the range of 2.9—3.9 percent, that simple CWP and PMF have not been eliminated.

Through the joint promulgation of single, full-shift sample and plan verification rules, miners would be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust to no more than the applicable standard on each and every shift.[23] Reducing respirable coal mine dust concentrations over a 45-year occupational lifetime to no more than the applicable standard on just that percentage of shifts showing an excess would lower the cumulative exposure, thereby significantly reducing the risk of both simple CWP and PMF among miners. We have estimated the health benefits of the two rules arising from the elimination of overexposures on all shifts at only those MMUs exhibiting a pattern of recurrent overexposures on individual shifts.

Based on 1999 operator data, there were 704 MMUs (out of 1,251) at which regular (not abatement) designated occupational (DO) samples exceeded the applicable standard on at least two of the sampling shifts reported in 1999 (MSHA, Data file:Operator.ZIP). MSHA considers these 704 MMUs, representing more than one-half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures. Based on valid DO operator samples were collected on a total of 18,569 shifts at these 704 MMUs; the applicable standard was exceeded on 3,977 of these shifts or 21.4 percent.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures),[24] bringing dust concentrations down to no more than the applicable standard on each and every production shift would reduce DO exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 21 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the DO level, by 0.22 mg-yr/m^3 over the course of a working year (i.e., 21 percent of shifts in one year times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected DO miner would, on average, amount to a reduction in accumulated exposure of approximately 10 mg-yr/m^3 (i.e., 45 years times 0.22 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples submitted to MSHA tend to under-represent either the frequency or magnitude (or both) of individual full-shift excursions above the applicable standard, then eliminating such excursions would provide a lifetime reduction of even more than 10 mg-yr/m^3 for each exposed miner.

When the dust concentration measured for the DO exceeds the applicable standard, measurements for at least some of the other miners working in the same MMU may also exceed the standard on the same shift, though usually by a smaller amount. Furthermore, although the DO represents the occupation most likely to receive the highest exposure, other miners working in the same MMU may be exposed to even higher concentrations than the DO on some shifts. Therefore, in addition to the affected DO miners, there is a population of other affected miners who are also expected to experience a significant reduction in risk as a result of eliminating overexposures on their individual shifts.

To estimate how many miners other than the DO would be substantially affected, MSHA examined the results from all valid dust samples collected by MSHA inspectors in underground MMUs during 1999 (MSHA, Data file: Inspctor.zip). Within each MMU, the inspector typically takes one full-shift sample on the DO and, on the same shift, four or more additional samples representing other occupations. On 896 shifts, at a total of 450 distinct MMUs, the DO measurement exceeded the applicable standard and there were at least three valid measurements for other occupations available for comparison. There was an average of 1.2 non-DO

[23] For details, see Quantitative Risk Assessment and Significance of Risk sections.

[24] MSHA estimates an MMU average of 384 production shifts per year. Since miner operators are required to submit five valid designated operator (DO samples to MSHA every two months, there would typically be 30 valid DO samples—for each MMU that was in operation for the full year. If dust concentrations on two or more of the sampled shifts exceed the standard, then it follows, at a 95-percent confidence level, that the standard was exceeded on at least six shifts over the full year.

measurements in excess of the standard on shifts for which the DO measurement exceeded the standard.[25] For non-DO measurements that exceeded the standard on the same shift as a DO measurement, the mean excess above the standard was approximately (0.8 mg/m^3).[26]

Combining these results with the 21-percent rate of excessive exposures observed for the DO on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1.2 other miners, in addition to the one classified as DO, is overexposed on at least 21 percent of all production shifts. Over the course of a working year, the reduction in exposure expected for these affected non-designated occupational (NDO) miners, is 0.17 mg-yr/m^3 (*i.e.,* 21 percent of one year, times 0.8 mg/m^3).

The expected lifetime for all American males, conditional on their having reached 20 years of age, is 73 years (U.S. Census March 1997, Table 18; U.S. Census March 1997, Table 119).[27] On average, the best estimate of the lifetime benefit to exposed miners is expressed by the reduction in prevalence of disease at age 73. To project the reduction in risk of simple CWP and PMF among affected DOs and NDOs, MSHA applied its best estimate of dose response to a hypothetical cohort of underground coal miners who work on an MMU exhibiting a pattern of recurrent overexposure, and who, on average, begin working at age 20, retire at age 65, and live to age 73.[28] Strengths and weaknesses of various epidemiological studies were presented in the Health Effects section supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material impairment with respect to simple CWP and PMF. Two of the distinguishing qualities of Attfield and Seixas (1995) are the dose-response relationship over a miner's lifetime and the fact that these data best represent the recent conditions experienced by miners in the U.S. Using this relationship, it is possible to evaluate the impact on risk of both simple CWP and PMF expected from bringing respirable coal mine dust concentrations down to or below the applicable standard on every shift. This is the only contemporary epidemiological study of simple CWP and PMF providing such a relationship.

To estimate the benefits (i.e., number of cases of simple CWP and PMF prevented) of single, full-shift sample and plan verification combined, we applied these estimates of risk reduction to the estimated sub-populations of affected miners. As of February 12, 1999, there were 984 producing MMUs;[29] applying the pattern of recurrent overexposures among MMUs as identified in the Quantitative Risk Assessment, 56 percent, by mine size, we estimate there to be 552 affected MMUs (MSHA Table, November 18, 1999; MSHA Table, February 12, 1999). Based on MSHA's experience, we would expect one DO and seven NDOs for each shift of production at each MMU. Therefore, among underground coal miners working on an MMU, we estimate 12.5% to be designated occupational miners and 87.5% to be non-designated occupational miners.

The benefits that will accrue to coal miners exposed to respirable coal mine dust and to mine operators, and ultimately to society at large, are substantial and take a number of forms. These proposed rules would reduce a significant health risk to underground coal miners, reducing the potential for illnesses and premature death and their attendant costs to miners, their employers, their families, and society.

The joint promulgation of these rules should realize a positive economic impact on the Department of Labor's (DOL's) Black Lung Program and relatedly on mine operators. The Black Lung Program compensates *eligible* miners, and *their* survivors under the Black Lung Benefits Act. This program provides monthly payments and medical benefits (diagnostic and treatment) to miners who are found to be totally disabled by black lung disease, including cases of PMF and simple CWP. In 1986, DOL's Employment Standards Administration reported that 12% of approved cases of Black Lung Program were identified as cases of PMF based on chest radiographs, while sixty-four percent had simple CWP based on chest radiographs. For miners who stopped working in coal mines after 1969 and for whom the DOL can establish that the miner worked for the same operator for at least one calendar year, and that miner had at least 125 working days in that year, that operator is financially responsible for the miner's Black Lung benefit payment. If a responsible operator cannot be identified for an eligible miner, benefit payments are made by the Black Lung Disability Trust Fund. To the extent that these rules reduce overexposures to respirable coal mine dust, there should be fewer Black Lung Program cases. Therefore, over time, the associated financial outlay by responsible operators through either insurance premiums or direct payments of Black Lung benefits should be lower than would otherwise occur. The financial impact could be substantial see discussion in Chapter IV, of the PREA. In 1980, the Black Lung Program estimated average lifetime pay-outs for responsible operators for married miners of about $248,700 dollars, assuming a 7 percent annual rate increase (ESA, 1980). In fiscal year 1999, 443 claims for Black Lung Benefits were accepted as new cases; sixty-six percent (293) are the financial responsibility of coal mine operators (Peed, 2000).

Table IX–2 presents the estimated number of cases of simple CWP and PMF that would be prevented among the 56 percent of MMUs exhibiting a pattern of recurrent overexposures. For all categories of simple CWP and PMF combined, we estimate 37 fewer of these cases, among affected miners, than would otherwise occur without the promulgation of single, full-shift sample and plan verification rules. Eleven of these cases would be the most severe form of coal miners pneumoconiosis, PMF, and as such this benefit could be interpreted as prevented premature deaths due to occupational exposure to respirable coal mine dust. Since simple CWP predisposes the development of PMF, it is important that it also be prevented (Balaan, *et al.,* 1993).

As discussed in the Significance of Risk sections, MSHA believes this QRA for simple CWP and PMF strikes a reasonable balance based on available data. Yet, our estimates likely understate the true impact of these rules since our analyses are restricted to a sub-population of affected miners, those working at MMUs exhibiting a pattern of recurrent overexposures, not the broader population of coal miners who will benefit from these rules. Furthermore, to estimate the average

[25] With 95-percent confidence, on shifts for which the DO measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 1.11.

[26] With 95-percent confidence, the mean excess is at least 0.72 mg/m^3.

[27] Since females have a greater life expectancy than males, the expected benefits would increase if the proportion of female miners were to increase substantially in the future.

[28] If a different definition of ''exhibiting a recurrent pattern of overexposures'' were used in these analyses, the estimate of the reduction in risk and associated benefits would be different. For example, if the criterion were that four or more DO bimonthly exposure measurements exceeded the applicable standard, we could state, with 95% confidence, that the standard was exceeded on at least 20 shifts in a year of 384 shifts. Using four as the criterion would reduce the population for whom we are estimating benefits, and decrease the estimated number of prevented cases by 19%.

[29] Nine hundred and eighty-four refers to the number of MMUs operating on February 12, 1999. The 1,443 number mentioned previously refers to all MMUs in operation at any time in 1999.

overexposure which would be prevented, MSHA had to use data collected for compliance purposes which may not represent typical environmental conditions.

The degree to which the exposure level of respirable coal mine dust on sampling shifts may not be representative of typical exposure levels is affected by the following factors:

(1) There exists a positive relationship between coal production and generation of respirable coal mine dust;

(2) Current sampling procedures permit sampling measurements to be taken at the mid-range of the distribution of level of production—sampling measurements must be taken on shifts with production at least 60% of the average production during the last 30 days and at least 50% of average production for the last valid set of bimonthly samples for inspector and operator samples, respectively;

(3) Miners have reported and MSHA data have demonstrated lower levels of production on sampling shifts versus non-sampling shifts (MSHA, September 1993);

(4) On some sampling shifts, miners have reported that more engineering controls may be used than on other shifts, thus reducing the measured amount of respirable coal mine dust;

(5) MSHA analyses have demonstrated, even when controlling for production, in mines with fewer than 125 employees, on continuous mining MMUs, respirable coal mine dust exposures were much higher during the unannounced Spot Inspection Program (SIP) sampling shifts than on shifts operators sampled—this is consistent with the effect of increasing engineering controls on shifts during which bimonthly samples are conducted compared to the level of use of engineering controls used on shifts for which the operator does not expect sampling to be conducted given the same production level (Denk, 1993);

(6) Across mine size, designated area samples have been found to be larger for shifts on which unannounced compliance sampling occurred compared to operator sampling shifts—in one study they differed by at least a factor of 40 percent in large mines and 100 percent in the smallest mines (ibid. p 211–212); and

(7) Existing MSHA technical information indicates that some reduction in production levels occurs during some sampling periods on longwalls (Denk, 1990).

Therefore, at a bare minimum, over an occupational lifetime (45-years) for miners who live to age 73 who worked at MMUs exhibiting a pattern of recurrent overexposures, we estimate at least 37 fewer cases of pneumoconiosis (simple coal workers pneumoconiosis (CWP) and progressive massive fibrosis (PMF)) than would otherwise occur without the promulgation of these rules.

Our current quantitative estimate of benefits demonstrates and qualitative discussions punctuate that these rules will have a significant positive impact on the health of our Nation's coal miners when promulgated. Yet, *due to the limitations on these data,* we believe our benefit estimate *may understate* the number of cases of simple CWP and PMF which would be prevented over an occupational lifetime.

MSHA believes that cases of simple CWP and PMF would also be prevented among other types of underground miners, such as roofbolters working in designated areas (DA). Based on MSHA experience it is reasonable to expect roofbolter DA's pattern of overexposures for respirable coal mine dust to be similar to that for miners with the highest exposure on an MMU. If so, we would expect 13 additional cases of simple CWP and PMF to be prevented. Affected DAs include DAs who work at the 56 percent of the MMUs under consideration who are exposed to dust concentrations similar to the DO, over a 45-year occupational lifetime (MSHA Table, November 18, 1999; MSHA Table, February 12, 1999).

Although the effect cannot readily be quantified, to the extent that these rules would also reduce the cumulative exposure to respirable coal mine dust among some miners working in those MMUs not exhibiting overexposures, it is reasonable to expect that we would observe an incremental benefit among that sub-population of coal miners. Moreover, to the extent that the cumulative dust exposure is reduced for miners working in the ''out by'' areas, away from the mining face (i.e., MMU) where coal is extracted from the coal seam, they too may realize occupational health benefits due to the simultaneous promulgation of these proposals. Therefore, our best estimate of 37 prevented cases of simple CWP and PMF, combined, among all affected miners *likely* underestimates the true benefit realized by the coal mining workforce through the reduction of overexposures to no more than the applicable standard on each shift.

Clearly PMF is associated with premature death. Since simple CWP may evolve to PMF, even after occupational exposure has ceased, it has the propensity to become a life threatening illness. By reducing the total number of simple CWP and PMF cases among affected miners from 259 to 222, over 45 years, these standards, at a minimum, are projected to prevent an average of four cases of simple CWP and PMF for each 5-year interval.[30]

For all those reasons previously identified, MSHA believes that its estimate of 37 prevented cases of simple CWP and PMF over a 45 year working life understates the true number of cases of simple CWP and PMF which would be prevented. This belief is further supported by the fact that during the past few years, the Black Lung Benefits Program has been approving roughly 400 claims each year. These claims come from individuals whose exposure for the most part came after the current standard of 2.0 was established in 1972. Thus, we believe the consistent annual approval by the Black Lung Benefits Program, of hundreds of new cases of simple CWP and PMF per year, supports our belief that the true lifetime occupational health benefits of the proposed rules are higher than we have estimated. Even assuming that the number of new claims would decline in future years simply due to the continuing decline in the number of coal miners, MSHA expects that assuring that future exposures are maintained below the 2.0 exposure limit will reduce the number of new cases of simple CWP and PMF by considerably more than 1 per year.

In addition to the prevention of simple CWP and PMF, each of the 8,640 affected miners at MMUs exhibiting a pattern of recurrent overexposures will realize some health benefit by limiting his or her cumulative exposure to respirable coal mine dust to no more than the applicable standard on each and every shift.

The expected number of prevented cases of simple CWP and PMF would not be realized for some time even after the pattern of overexposures has been minimized or eliminated. This is due, in part, to the latency—that is, the disease does not develop immediately after exposure—of the development of simple CWP and PMF and the pre-existing occupational exposure histories of members of the current coal mining workforce. Our estimated benefit is based on the estimated number of underground coal miners working at the mine face, 17,280. If the size of this workforce significantly changed in the future and the projected pattern of prevented overexposures remained the same, the number of cases of prevented

[30] Applying an estimated prevalence rate of 3.0 percent to the estimated population of affected miners (8,640) results in an estimate of 259 cases of simple CWP and PMF.

simple CWP and PMF would need to be adjusted to account for the change.

Various data, assumptions and caveats were used to conduct the quantitative risk assessment, significance of risk discussion, and benefits analyses. Therefore, we request any information which would enable us to conduct more accurate analyses of the estimated health benefits of the single, full-shift sample rule and plan verification rule, both individually, and in combination.

TABLE IX–2.—OVER A WORKING LIFETIME AMONG AFFECTED MINERS, ESTIMATED NUMBER OF CASES OF CWP [A] AND PMF [B] PREVENTED DUE TO THE IMPLEMENTATION OF SINGLE, FULL-SHIFT SAMPLE AND PLAN VERIFICATION

Type of Miner	Affected Miners, n=	Simple CWP categories 1, 2, 3 or PMF		Simple CWP categories 2 or 3 or PMF		PMF	
		Reduction in risk [c]	Prevented cases, n=	Reduction in risk [c]	Prevented cases, n=	Reduction in risk [c]	Prevented Cases, n=
Affected Designated Occupational Miners [d]	1,080	18/1000	19.4	9.8/1000	10.6	5.1/1000	5.5
Affected Non-Designated Occupational Miners [e]	7,560	2.3/1000	17.4	1.3/1000	9.8	0.7/1000	5.3
Total	8,640	NA	37	NA	20	NA	11

[a] Simple CWP: Simple coal workers' pneumoconiosis.
[b] PMF: Progressive massive fibrosis.
[c] Reduction in risk per 1,000 affected miners, over a 45-year working lifetime.
[d] Affected Designated Occupation (DO) Miners: Includes all miners who work at the 56-percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the DO, over a 45-year occupational lifetime.
[e] Affected Non-Designated Occupation (Non-DO) Miners: Includes all underground faceworkers under consideration who are not classified as the DO.

B. Regulatory Flexibility Certification and Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires MSHA to conduct an analysis of the effects of the proposed plan verification rule on small entities. That analysis is summarized here; a copy of the full analysis is included in Chapter V of our PREA in support of the proposed single, full-shift sample and plan verification rules. We encourage the mining community to provide comments on this analysis.

The Small Business Administration generally considers a small entity in the mining industry to be one with 500 or fewer workers. MSHA has traditionally defined a small mine to be one with fewer than 20 workers, and has focused special attention on the problems experienced by such mines in implementing safety and health rules. Accordingly, we have separately analyzed the impact of the joint notice proposed rule both on mines with 500 or fewer workers and on those with fewer than 20 workers.

Pursuant to the Regulatory Flexibility Act, MSHA must determine whether the costs of the joint notice proposed rule constitute a ''significant impact on a substantial number of small entities.'' Pursuant to the Regulatory Flexibility Act, if an Agency determines that a proposed rule would not have such an impact, it must publish a ''certification'' to that effect. In such a case, no additional analysis is required (5 U.S.C. § 605). In evaluating whether certification is appropriate, MSHA utilized a ''screening test,'' comparing the costs of the proposed plan verification rule to the revenues of the affected coal sector. If the estimated costs are less than 1 percent of revenues for the affected entities, or they are negative (that is, they provide a cost savings), then the rule is assumed not to have a significant impact on small mine operators.

Table IX–3 compares, for small underground coal mines (using both MSHA's and SBA's definition), MSHA's estimated total annual compliance costs of the proposed plan verification rule to estimated annual revenues.

Table IX–3 shows that under either MSHA's or SBA's definition of a small mine, the proposed plan verification rule would provide a net cost savings to small underground coal mines. As a result, MSHA is certifying that the proposed plan verification rule for underground coal mines would not have a ''significant impact on a substantial number of small entities,'' and has performed no further analyses.

TABLE IX–3.—ESTIMATED YEARLY COSTS OF PROPOSED PLAN VERIFICATION RULE RELATIVE TO YEARLY REVENUES FOR UNDERGROUND COAL MINES

[Dollars in thousands]

Mine size	Proposed rule net costs [a]	Underground coal mine revenues [b]	Costs as percentage of revenues
< 20 employees	($930.1)	$249,418	(0.4%)
< 500 employees [c]	($1,251.9)	$6,883,339	(0.03%)

[a] Estimated yearly costs are composed of ''adjusted'' first year costs that have been annualized plus annual costs.
[b] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on 1997 Final MIS data (quarter 1–quarter 4), CM441, cycle 1997/184; and U.S. Department of Energy, Energy Information Administration, Annual Energy Review 1998, DOE/EIA–0384(98), July 1999, p 203.
[c] Includes mines with fewer than 20 employees.

X. Other Statutory Requirements

A. Plain Language

We (MSHA) wrote appropriate portions of this proposed rule in the more personal style advocated by the President's Memorandum on ''plain language.'' ''Plain language'' encourages the use of personal pronouns (we and you); sentences in the active voice; a greater use of headings, lists, and questions, as well as charts, figures, and tables.

In this proposed rule, ''you'' refers to production-operators and independent contractors because they have the primary responsibility for compliance with MSHA regulations. In addition, we recognize and appreciate the value of comments, ideas, and suggestions from labor organizations, industry associations, and other parties who have an interest in health and safety training for miners.

We would appreciate comments and suggestions from all parties on this proposed rule and on our use of ''plain language.'' How could we improve the clarity of this style?

B. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

C. Paperwork Reduction Act of 1995

The proposed plan verification rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). The proposed rule has first year burden hours (those that occur *only* in the first year) and, annual burden hours which occur in the first year and every year thereafter.

How some types of burden hours and costs were handled requires explanation. In a few cases, the proposed plan verification rule imposes burden hours and costs that would be the same every year, beginning with the first year that the rule takes effect. These are ''annual'' burden hours and costs, as traditionally defined.

In most cases, however, the proposed plan verification rule imposes burden hours and costs which would be the same each year starting with the second year the proposed rule is in effect, but whose first year burden hours and costs would be different. MSHA transformed these first year burden hours and costs and annual burden hours and costs starting in Year 2 into adjusted first year burden hours and costs (first year burden hours and costs minus an amount equal to annual burden hours and costs starting with Year 2 after the rule takes effect) and true annual burden hours and costs starting in Year 1 after the rule takes effect.[31]

First Year Burden Hours

In the first year the plan verification rule is in effect, there would be a total *net* burden hour savings, for underground coal mine operators, of 44,750, which is composed of 7,912 first year burden hours (from Table X–1) and 52,662 annual burden hour savings (from Table X–2). The 44,750 net burden hour savings have associated cost savings of $847,236, which is composed of $360,820 of adjusted first year costs (from Table X–1) and $1,208,056 of annual cost savings (from Table X–2).

Annual Burden Hours in Second Year and Every Year Thereafter

There would be a total *net* annual burden hour savings, for underground coal mine operators, in the second year the proposed plan verification rule is in effect and every year thereafter of 52,662, which has associated cost savings of approximately $1.21 million annually (from Table X–2). These net burden hours and costs include annual burden hour and cost savings due to: reduced mine operator citations based on MSHA inspectors' single, full-shift sample results and the elimination of associated operator abatement sampling; reduced mine operator citations issued based on bi-monthly sampling results and the elimination of associated operator abatement sampling; and savings from operators no longer having to perform bi-monthly operator sampling.

[31] A hypothetical example might help to explain this procedure. Suppose that compliance costs are $2,000 the first year and $400 each year thereafter. The adjustment procedure simply splits first year compliance costs into two parts: (1) $400, for the first year of annual costs; and (2) the residual $1,600. Consequently, adjusted first year costs would be $1,600 and annual costs (starting in year 1) would be $400.

TABLE X–1.—SUMMARY OF PV PROPOSED RULE FIRST YEAR PAPERWORK BURDEN HOURS AND RELATED COSTS THAT OCCUR ONLY IN THE FIRST YEAR*

Detail	<20 emp.			≥20 emp. ≤500			>500 emp.			Total		
	Adjusted first year hours	Adjusted first year costs	Adjusted first year costs annualized	Adjusted first year hours	Adjusted first year costs	Adjusted first year costs annualized	Adusted first year hours	Adjusted first year costs	Adjusted first year costs annualized	Adjusted first year hours	Adjusted first year costs	adjusted first year costs annualized
UNDERGROUND COAL MINES												
PV Rule:												
Increase	1,359	$61,059	$4,274	6,140	$280,581	$20,372	398	$18,425	$1,399	7,897	$360,065	$26,045
Reduced Inspector Citations [a]	3	$151	$11	6	$302	$21	0	$0	$0	9	$453	$32
Reducted Operator citations [b]	3	$151	$11	3	$151	$11	0	$0	0	6	$302	$22
Elimination of Bi-Mo. Sampling	0	$0	$0	0	$0	$0	0	$0	$0	0	$0	$0
Net PV Rule	1,365	$61,361	$4,296	6,149	$281,034	$20,404	398	$18,425	$1,399	7,912	$360,820	$26,099

*Source: Preliminary Regulatory Economic Analysis Tables VII-32, VII-43, and VII-53.
[a] Related to reduced citations issued based on inspector sample results due to better mine ventilation plans arising from the PV rule.
[b] Related to reduced citations issued based on operator sample results due to better mine ventilation plans arising from the PV rule.

TABLE X–2.—SUMMARY OF ANNUAL PAPERWORK BURDEN HOURS AND RELATED COSTS THAT OCCUR IN THE FIRST YEAR AND EVERY YEAR THEREAFTER*

Detail	<20 emp.		≥20 emp. ≤500		>500 emp.		Total	
	Annual hours	Annual costs	Annual hours	Annual costs	Annual hours	Annual costs	Annual hours	Annual costs
UNDERGROUND COAL MINES								
PV Rule:								
Increase	315	$14,126	1,458	$63,236	111	$4,550	1,884	$81,912
Reduced Inspector Citations[a]	−1,012	−$24,678	−2,941	−$71,911	−111	−$2,695	−4,064	−$99,285
Reduced Operator Citations[b]	−474	−$11,606	−2,394	−$58,386	−105	−$2,561	−2,973	−$72,553
Elimination of Bi-Mo. Sampling	−9,084	−$212,901	−35,350	−$830,435	−3,075	−$74,794	−47,509	−$1,118,130
Net PV Rule	−10,255	−$235,059	−39,227	−$897,496	−3,180	−$75,500	−52,662	−$1,208,056

*Source: Preliminary Regulatory Economic Analysis Tables VII–7, VII–33, VII–43, VII–53, and VII–57.

[a] Reduction related to: (1) Reduced citations issued based on inspector sample results due to better mine ventilation plans arising from the PV rule and (2) reduced abatement sampling and associated costs due to the elimination of bi-monthly operator sampling.

[b] Reduction related to: (1) Reduced citations issued based on operator sample results due to better mine ventilation plans arising from the PV rule and (2) reduced abatement sampling and associated costs due to the elimination of bi-monthly operator sampling.

We invite public comments and are particularly interested in comments which:

1. Evaluate whether the proposed collection of information (presented here and in the PREA for the proposed single, full-shift sample and plan verification rules) is necessary for the proper performance of the functions of MSHA, including whether the information will have practical utility;
2. Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

We have submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, OMB New Executive Office Building, 725 17th St., NW, Rm. 10235, Washington, DC 20503, Attn: Desk Officer for MSHA. Submit written comments on the information collection not later than September 5, 2000.

Our paperwork submission summarized above is explained in detail in the PREA. The PREA includes the estimated costs and assumptions for each proposed paperwork requirement related to this proposed rule. A copy of the PREA is available from us. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

D. National Environmental Protection Act

The National Environmental Policy Act (NEPA) of 1969 requires each Federal agency to consider the environmental effects of proposed actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. We have reviewed the proposed standard in accordance with the requirements of the NEPA (42 U.S.C. 4321 *et seq.*), the regulation of the Council on Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). As a result of this review, we have preliminarily determined that this proposed standard will have no significant environmental impact.

Commenters are encouraged to submit their comments on this determination.

E. Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

F. Executive Order 12988 (Civil Justice)

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

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

In accordance with Executive Order 13045, protection of children from environmental health risks and safety risks, we have evaluated the environmental health or safety effects of the proposed rule on children. The Agency has determined that this proposal would not have an adverse impact on children.

H. Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

We certify that this proposed rule does not impose substantial direct compliance costs on Indian tribal governments.

I. Executive Order 13132 (Federalism)

We have reviewed this rule in accordance with Executive Order 13132 regarding federalism, and have determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government.''

XI. Public Hearings

MSHA plans to hold public hearings on the proposed rule. The hearings will be held in Prestonsburg, Kentucky (Jenny Wiley, State Resort Park); Morgantown, West Virginia; and Salt Lake City, Utah. The hearing dates, times, and specific locations will be announced by a separate document in the **Federal Register**. The hearings will be held under Section 101 of the Federal Mine Safety and Health Act of 1977.

Appendix A—Derivation of the Critical Values

All measurements of respirable dust concentration are subject to potential sampling and analytical errors. Because of such errors, a measurement may fall slightly below the verification limit even when the true concentration of respirable coal mine dust or crystalline silica does not. Therefore, to ensure that the verification limits have actually been met, it is necessary to provide for a margin of error in each measurement. The critical values provide this margin of error. When valid measurements do not exceed the appropriate critical values, we can be confident that the verification limits have not been exceeded at the sampled locations.

To explain how the verification limits were derived, it is helpful to define some symbolic notation. Let X represent a measurement, and let μ represent the true value of whatever quantity is being measured—i.e., the full shift average concentration, at a specific sampling location, of either respirable coal mine dust or respirable crystalline silica dust. The difference between X and μ is the measurement error and is denoted by ε. $X = \mu + \varepsilon$.

In accordance with standard statistical and industrial hygiene practice, ε (but not μ) is assumed to be normally distributed. Since the approved sampling and analytical methods for measuring concentrations of respirable coal mine dust and respirable silica dust are both statistically unbiased, ε has a mean value of zero and a degree of variability represented by its standard deviation, denoted by σ_ε. The ratio of σ_ε to μ is called the measurement *coefficient of variation* (CV) due to sampling and analytical errors.[1] The CV relates entirely to variability due to measurement errors and not at all to variability in actual dust concentrations.

For respirable coal mine dust, the value of CV used in calculating critical values was chosen to be consistent with the value proposed at $\mu = 2.0$ mg/m^3 in the Coal Mine Respirable Dust Standard Noncompliance Determinations Notice, (63 FR 5700, February 3, 1998):

$$CV = \sqrt{(7\%)^2 + (5\%)^2 + (5\%)^2} = 10\%$$

[1] In some publications, this ratio is called the relative standard deviation (RSD). It is sometimes also denoted by CV_{total}, where ''total'' refers to all sources of potential sampling and analytical error but does not cover variability in μ itself.

The 7-percent term in this formula accounts for uncertainty due to potential weighing error, and the two 5-percent terms account for differences between individual cyclones and for variability in the exact volume of air pumped through the filter during a 480-minute shift.

For respirable silica dust, the value of CV used in calculating critical values is:

$$CV = \sqrt{(5.3\%)^2 + (4.2\%)^2 + (5.6\%)^2} = 9\%$$

The 5.3-percent term in this formula accounts for imprecision in the Infrared (Infrared Spectrophotometer or IR) measurement of crystalline silica mass deposited on the filter, the 4.2-percent term represents variability in air volume, and the final 5.6-percent term accounts for uncertainty due to variability between individual cyclones, given the size distribution of crystalline silica dust encountered in mining environments (Bartley, November 1999).

Each critical value (c) was calculated to provide a confidence level of at least 95 percent that the ventilation plan was effective in preventing dust concentrations from exceeding the verification limits. Using a confidence coefficient of 1.645, based on the standard normal probability distribution, knowledge of the CV makes it possible to calculate a 1-tailed, 95-percent upper confidence limit (UCL) for μ, given a single measurement X. The UCL is $X \cdot (1 + 1.645 \cdot CV)$. When $X \le c$, the UCL for μ is less than or equal to the verification limit. When $X > c$, the UCL for μ exceeds the verification limit.

For example, suppose X = 1.71 mg/m^3 respirable dust. Then the UCL for μ would be $1.71 \cdot (1 + (10\% \text{ of } 1.645)) = 1.99$ mg/m^3, which is less than the verification limit for respirable coal mine dust. If, however, X = 1.72 mg/m^3, then the UCL for μ would be $1.72 \cdot 1.1645$ mg/m^3, which slightly exceeds the verification limit. Similarly, for respirable crystalline silica dust, the UCL for μ is $87 \cdot (1 + (9\% \text{ of } 1.645)) = 99.9$ μg/m^3 when X = 87 μg/m^3 and slightly above the verification limit of 100 μg/m^3 when X = 88 μg/m^3.

If more than one measurement is available, then the confidence coefficient changes to reflect multiplication of the tail probabilities for independent measurement errors. When n measurements are available, the objective is to calculate a critical value (c) such that if each of the n measurements is $\le$ c, then the 1-tailed 95-percent UCL for μ is $\le$ the verification limit. Since the product of the n individual tail probabilities must equal 0.05, the appropriate 1-tail probability for each measurement individually is the nth root of 0.05.

For example, if n = 3, then the appropriate 1-tail probability for each measurement is the cube root of 0.05, or 0.3684. The standard normal confidence coefficient corresponding to this tail probability is 0.336. Therefore, when all three measurements have the same value (X), the UCL is $X \cdot (1 + 0.336 \cdot CV)$. Substituting the appropriate CV estimate, the UCL is $X \cdot 1.0336$ for coal mine dust or $X \cdot 1.0302$ for crystalline silica. Consequently, to obtain the critical value, the verification limit is first divided by 1.0336 (coal mine dust) or 1.0302 (crystalline silica dust) and then truncated to the desired number of decimal digits. This yields 1.93 mg/m^3 for coal mine dust and 97 μg/m^3 for respirable crystalline silica dust.

The confidence coefficients used to establish critical values by this method are as follows:

n—Confidence Coefficient	
1	1.645
2	0.760
3	0.336
4	0.068

For n > 4, the confidence coefficient is less than 0.068.

It should be noted that although the critical value calculated for $n \ge 4$ is slightly below the verification limit for both types of dust, for simplicity it was set equal to the verification limit as a close approximation.

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XII. Regulatory Text

List of Subjects

30 CFR part 70

Coal, Mine safety and health, Underground coal mines, Respirable dust.

30 CFR part 75

Coal, Mine safety and health, Underground coal mines, Ventilation.

30 CFR part 90

Coal, Mine safety and health.

Dated: June 20, 2000.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, it is proposed to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 70—MANDATORY HEALTH STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957 and 961, unless otherwise noted.

2. Section 70.2 is revised to read as follows:

Subpart A—General

Sec.
70.2 Definitions.

Subpart A—General

§ 70.2 Definitions.

(a) *Act* means the Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164, 30 U.S.C. 801 *et. seq.*

(b) *Active workings* means any place in a coal mine where miners are normally required to work or travel.

(c) *Concentration* means an 8-hour MRE equivalent measure of the amount of respirable dust per unit volume of air. The concentration of respirable dust is determined in two steps. First, divide the weight of dust in milligrams collected on the filter of an approved sampling device by 480 minutes times the sampler flow rate. Second, multiply that concentration by a constant factor prescribed by the Secretary for the approved sampling device used. The product is the equivalent concentration as measured with an MRE instrument.

(d) *Critical value* means the highest full shift dust concentration measurement that MSHA will accept in approving a mine ventilation plan or interim plan.

(e) *Designated area* (DA) means an area of a mine identified by the operator under § 75.371(t) of this title and approved by the District Manager, or identified by the Secretary. Each DA will be identified by a four-digit identification number assigned by MSHA.

(f) *Designated occupation* (DO) means the occupation or work location on a mechanized mining unit that has been determined by results of respirable dust samples to have the greatest respirable dust concentration.

(g) *District Manager* means the manager of the Coal Mine Safety and Health District in which the mine is located.

(h) *Dust control parameters* means the engineering or environmental controls, maintenance procedures, and any other requirements specified in each ventilation plan that are being used on the mechanized mining unit and throughout the mine to control the level of respirable coal mine dust and respirable quartz dust in the work environment.

(i) *Engineering or environmental controls* means any method to control the level of respirable coal mine dust and quartz dust in the work environment by either reducing dust generation or by suppressing, diluting, capturing or diverting the dust being generated during the mining process. It does not include powered, air-purifying respirators (PAPRs) or any other type of personal protection equipment.

(j) *Full shift* means an entire work shift including travel time but excluding, for purposes of bimonthly sampling only, any time in excess of 480 minutes.

(k) *Interim ventilation plan* means a ventilation plan for a longwall operation under which operators are allowed to use PAPRs or verifiable administrative controls.

(l) *Longwall face* means a working place in a coal mine where coal is extracted from the exposed face or seam using the longwall method of mining.

(m) *Longwall mining section* means the area of the coal mine employing longwall mining, from the loading point of the section up to and including the longwall face. The loading point is also included.

(n) *Material produced* means coal and/or any other substance extracted by a mechanized mining unit during any production shift.

(o) *Mechanized mining unit (MMU)* means a unit of mining equipment including hand loading equipment used for the production of material; or a specialized unit which utilizes mining equipment other than specified in § 70.206 for the production of material. MSHA assigns each MMU a four digit identification number. The MMU retains the identification number regardless of where the unit relocates within the mine. When two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment are identified as a single MMU. When two or more MMUs are simultaneously engaged in the production of material within the same working section, each such MMU is identified separately.

(p) *MRE* means the Mining Research Establishment of the National Coal Board, London, England.

(q) *MRE instrument* means the gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

(r) *MSHA* means the Mine Safety and Health Administration of the Department of Labor.

(s) *Powered, air-purifying respirator (PAPR)* means a type of loose-fitting helmet respirator with a visor that uses a blower to force the ambient air through air-purifying elements to deliver filtered air into the miner's breathing area.

(t) *Production shift* means:

(1) With regard to a mechanized mining unit, a shift during which material is produced, or

(2) With regard to a designated area of a mine, a shift during which material is produced and routine day-to-day activities are occurring in the designated area.

(u) *Provisional ventilation plan* means a ventilation plan which has been approved by the District Manager pending verification by MSHA of the effectiveness of the plan's dust control parameters.

(v) *Quartz* means crystalline silicon dioxide (SiO_2) as measured by MSHA's Analytical Method P–7: Infrared Determination of Quartz in Respirable Coal Mine Dust.

(w) *Respirable dust* means dust collected with a sampling device approved by the Secretary and the Secretary of Health and Human Services in accordance with part 74 (Coal Mine Dust Personal Sampler Units) of this title. Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education, and Welfare are continued in effect.

(x) *Secretary* means the Secretary of Labor or delegate.

(y) *Verifiable administrative control* means any work practice that can significantly reduce daily exposure to respirable dust hazards by altering the way in which work is performed and which:

(1) Can be reviewed to confirm its proper implementation,

(2) Is clearly understood by miners, and

(3) Can be applied consistently over time.

(z) *Verification limits* means 2.0 mg/m^3 of respirable coal mine dust and 100 μg/m^3 of respirable quartz dust (MRE-equivalent concentrations) measured over a full shift.

(aa) *Verification production level (VPL)* means the tenth highest production level recorded in the most recent thirty production shifts.

(bb) *Verification sample* means a valid sample taken on a full shift during which the amount of material produced is at or above the VPL and using only the engineering or environmental controls and other measures included in the ventilation plan, at levels not exceeding 115% of the quantities specified in the plan.

3. Subpart B is revised to read as follows:

Subpart B—Dust Standards

70.100 What are the respirable dust standards when quartz is not present?
70.101 What is the respirable dust standard when quartz is present?

Subpart B—Dust Standards

Authority: 30 U.S.C. 811 and 813(h).

§ 70.100 What are the respirable dust standards when quartz is not present?

When quartz is not present:

(a) Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 70.2(c).

(b) Each operator shall continuously maintain the average concentration of respirable dust within 200 feet outby the working faces of each section in the intake airways at or below 1.0 milligrams of respirable dust per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 70.2(c).

§ 70.101 What is the respirable dust standard when quartz is present?

When the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz as determined by samples taken by the Secretary, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed at or below a concentration of respirable dust, expressed in milligrams per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 70.2(c), computed by dividing the percent of quartz into the number 10.

Example: The respirable dust associated with a mechanized mining unit or a designated area in a mine contains quartz in the amount of 20%. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that mechanized mining unit or designated area shall be continuously maintained at or below 0.5 milligrams of respirable dust per cubic meter of air (10/20=0.5 mg/m^3).

4. Subpart C is revised to read as follows:

Subpart C—Verification of Underground Coal Mine Ventilation Plan Effectiveness; Use of Approved Powered, Air-Purifying Respirators; Use of Verifiable Administrative Controls; Actions Necessary When in Violation of Respirable Dust Standard; and Status Change Reports

Verification of Underground Coal Mine Ventilation Plan Effectiveness

70.201 Who must have a verified ventilation plan?
70.202 What is a verified ventilation plan?
70.203 What will trigger the plan verification process?
70.204 When will MSHA conduct verification sampling?
70.205 What must I (the operator) do to comply with this standard?
70.206 Who will MSHA sample and where will MSHA place the sampling device(s) when conducting verification sampling?
70.207 How many shifts will MSHA sample to verify my ventilation plan?
70.208 What if 30 shifts of production data are not available to establish the verification production level (VPL)?
70.209 When will MSHA approve my ventilation plan?
70.210 What must I (the operator) do if a verification sample exceeds either verification limit?
70.211 What if verification samples continue to exceed either verification limit even though I (the operator) believe all feasible engineer and environmental controls are in place?

Use of Approved Powered, Air-Purifying Respirators

70.212 For my longwall operation, what must I (the operator) do in order to use approved PAPRs to supplement engineering or environmental controls?
70.213 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating a PAPR respiratory protection program?
70.214 For my longwall operation, under what circumstances may I (the operator) continue to use PAPRs to supplement engineering or environmental controls?
70.215 What if an MSHA DO sample exceeds the applicable dust standard, or an MSHA sample for a miner required to wear a PAPR exceeds twice the applicable dust standard?

Use of Verifiable Administrative Controls

70.216 For my longwall operation, what must I (the operator) do in order to use verifiable administrative controls to supplement engineering or environmental controls?
70.217 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating verifiable administrative controls?
70.218 For my longwall operation with an approved interim ventilation plan, what must I (the operator) do if an MSHA sample exceeds the applicable dust standard?

Actions Necessary When in Violation of Respirable Dust Standards

70.219 What must I (the operator) do if I am cited for exceeding the applicable dust standard?

Information to Be Posted on the Mine Bulletin Board

70.220 What information must I (the operator) post on the mine bulletin board?

Status Change Reports

70.221 What action must I (the operator) take if the operational status of my mine, MMU, or DA changes?

Subpart C—Verification of Underground Coal Mine Ventilation Plan Effectiveness; Use of Approved Powered, Air-Purifying Respirators; Use of Verifiable Administrative Controls; Actions Necessary When in Violation of Respirable Dust Standard; and Status Change Reports

Authority: 30 U.S.C. 811, 813(h), and 957.

Verification of Underground Coal Mine Ventilation Plan Effectiveness

§ 70.201 Who must have a verified ventilation plan?

All underground coal mine operators must have a verified ventilation plan.

§ 70.202 What is a verified ventilation plan?

A verified ventilation plan is a plan that has been demonstrated as effective, at a high level of confidence, in maintaining the concentration of respirable coal mine dust and quartz dust in each MMU at or below 2.0 mg/m^3 and 100 μg/m^3, respectively. This demonstration is based on MSHA verification samples.

§ 70.203 What will trigger the plan verification process?

MSHA will initiate the plan verification process when:

(a) You submit a new ventilation plan under § 75.370 or you amend a previously approved ventilation plan under § 75.371(f); or

(b) The District Manager requires you to change the ventilation plan after determining that your dust control parameters no longer effectively control the concentration of respirable dust in the working environment of an MMU under the current mining conditions; or

(c) You propose revisions to a previously verified ventilation plan and the District Manager determines that the proposed revisions may cause the plan to be inadequate.

§ 70.204 When will MSHA conduct verification sampling?

The District Manager will notify you of the schedule for verification sampling after granting provisional approval of your ventilation plan. Before you receive provisional approval, however, you may be required to change your plan if the District Manager determines that your dust control parameters are inadequate or unsuitable for the current mining conditions.

§ 70.205 What must I (the operator) do to comply with this standard?

To comply with this standard, at the time the District Manager notifies you that MSHA will conduct verification sampling you must:

(a) Set your operating conditions so as to mine at or above the VPL and use only the dust control parameters and other measures listed in your plan on the date scheduled for verification sampling;

(b) For each MMU to be sampled, make available records of the amount of material produced each shift during the previous six-month period as prescribed in § 75.370(h);

(c) Provide the additional information described under § 75.371(f); and

(d) Notify the District Manager if you cannot meet the conditions described in paragraph (a) on the scheduled date.

§ 70.206 Who will MSHA sample and where will MSHA place the sampling device(s) when conducting verification sampling?

(a) MSHA will sample the environment of:

(1) The designated occupation (DO); roofbolter operators; longwall jack setters; and

(2) Any other occupation designated by the District Manager.

(b) Unless otherwise directed by the District Manager, MSHA will take DO samples by placing the sampling device(s) in the following locations:

(1) Conventional section using cutting machine—on the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(2) Conventional section shooting off the solid—on the loading machine operator or on the loading machine within 36 inches inby the normal working position;

(3) Continuous mining section other than auger-type—on the continuous mining machine operator or on the continuous mining machine within 36 inches inby the normal working position;

(4) Continuous mining machine; auger-type—on the jacksetter who works nearest the working face on the return air side of the continuous mining machine or at a location that represents the maximum concentration of dust to which the miner is exposed;

(5) Scoop section using cutting machine—on the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(6) Scoop section shooting off the solid—on the coal drill operator or on the coal drill within 36 inches inby the normal working position;

(7) Longwall section—on the miner who works nearest the return air side of the longwall working face or along the working face on the return side within 48 inches of the corner;

(8) Hand loading section with a cutting machine—on the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(9) Hand loading section shooting off the solid—on the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed; and

(10) Anthracite mine sections—on the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed.

§ 70.207 How many shifts will MSHA sample to verify my ventilation plan?

MSHA can approve your ventilation plan based on only one shift of sampling, provided all the samples taken on that shift meet the criteria for a verification sample and none of them exceed the critical values for a single shift specified in §§ 70.209 and 70.213. We will sample additional shifts if one verification sample exceeds the specified critical values, or if any of the samples taken do not meet the criteria for a verification sample.

§ 70.208 What if 30 shifts of production data are not available to establish the verification production level (VPL)?

If you do not have 30 shifts of production data to establish a VPL, the VPL will be the minimum production level attained on a shift that was sampled to verify the plan's effectiveness. This production level must be incorporated into the ventilation plan that is ultimately approved by the District Manager.

§ 70.209 When will MSHA approve my ventilation plan?

MSHA will approve your ventilation plan when:

(a) None of the verification samples exceed the following critical values for respirable coal mine dust and quartz dust:

(1) For respirable coal mine dust, the critical value is:

(i) 1.71 mg/m^3 if samples are collected for only one shift;

(ii) 1.85 mg/m^3 if samples are collected for two shifts;

(iii)1.93 mg/m^3 if samples are collected for three shifts; and

(iv) 2.0 mg/m^3 if samples are collected for four or more shifts.

(2) For respirable quartz dust, the critical value is:

(i) 87 ''μg/m^3 if samples are collected for only one shift;

(ii) 93 ''μg/m^3 if samples are collected for two shifts;

(iii) 97 ''μg/m^3 if samples are collected for three shifts; and

(iv) 100 ''μg/m^3 if samples are collected for four or more shifts.

(b) You adjust your plan, if necessary, to include all the dust control parameters that were in effect during verification sampling.

§ 70.210 What must I (the operator) do if a verification sample exceeds either verification limit?

If a verification sample exceeds either verification limit, you must:

(a) Immediately take corrective action to lower the concentration of respirable dust in the work environment of the affected occupation or location to a level no greater than the applicable verification limit;

(b) Make approved respiratory equipment available to affected miners following the procedures in § 70.300; and

(c) Within 5 days of receiving results of verification sampling, submit changes in your dust control parameters and any other corrective actions you implemented to the District Manager for review. The District Manager will notify you if your ventilation plan is provisionally approved under § 70.210 (c).

(1) If your ventilation plan is provisionally approved, the District Manager will notify you when MSHA will start verification sampling over again, or continue verification sampling.

(2) If your ventilation plan is not provisionally approved, the District Manager will require you to make additional changes in your plan parameters. Once you have made all required changes to your plan parameters, you will receive provisional approval of your ventilation plan. Then, the District Manager will notify you when MSHA will start verification sampling over again, or continue verification sampling from the point at which it stopped.

§ 70.211 What if verification samples continue to exceed either verification limit even though I (the operator) believe all feasible engineering and environmental controls are in place?

If verification samples continue to exceed the verification limit and you believe all feasible engineering and environmental controls are in place, then:

(a) If the ventilation plan being verified is for an MMU that uses a mining system other than longwall mining, MSHA may suggest additional controls for you to implement.

(b) If the MMU employs a longwall mining system, MSHA may suggest additional controls for you to implement; and, you may request in writing that the Administrator for Coal Mine Safety and Health determine whether or not you are using all feasible engineering or environmental controls to reduce concentrations of respirable dust to as low a level as possible; and

(c) If MSHA determines that you are using all feasible engineering or environmental on your longwall, based on its assessment of the suitability of available control measures to your particular MMU, MSHA will notify you that you may use either powered, air-purifying respirators (PAPRs) approved under 42 CFR 84, or verifiable administrative controls on an interim basis to supplement the engineering or environmental controls you have implemented to achieve compliance, until additional feasible engineering or environmental controls become available. If you use these supplements, the DO would be changed from the 060 to the 044 occupation.

Use of Approved Powered, Air-Purifying Respirators

§ 70.212 For my longwall operation, what must I (the operator) do in order to use approved PAPRs to supplement engineering or environmental controls?

In order to use PAPRs to supplement engineering or environmental controls, you must:

(a) Submit a revised ventilation plan to the District Manager within 5 days of receiving notification allowing you to supplement the engineering or environmental controls on your longwall for compliance purposes. Your plan must include feasible engineering or environmental controls capable of maintaining concentrations of respirable dust in the environment of:

(1) The DO (Occ 044—longwall operator or the occupation selected by the District Manager) at or below the verification limits; and

(2) Any miner working downwind of the DO, who is required to wear a PAPR,

at or below two times the verification limits.

(b) Incorporate in your plan a respiratory protection program for the use of PAPRs following the procedures specified in § 72.710. MSHA's District Manager may require you to make modifications to your respiratory protection program before granting provisional approval;

(c) Obtain provisional approval of your ventilation plan from the District Manager;

(d) Have MSHA verify your plan's effectiveness by sampling the environment of the DO (Occ 044—longwall operator) or other occupation directed by the District Manager and those miners working downwind of the DO who are required to wear approved PAPRs on the longwall face following the verification sampling procedures in §§ 70.205 and 70.206;

(e) Maintain and monitor compliance with the revised ventilation plan; and

(f) Continue to look for improvements that you can make and implement feasible solutions when they become available that would maintain the environment of the miners required to wear PAPRs at or below the verification limits.

§ 70.213 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating a PAPR respiratory protection program?

MSHA will approve your interim ventilation plan when:

(a) None of the verification samples for the DO exceed the critical values for respirable coal mine dust and quartz dust specified in § 70.209;

(b) None of the verification samples for the miners working downwind of the DO, who are required to wear approved PAPRs, exceed the following critical values for respirable coal mine dust and quartz dust:

(1) For respirable coal mine dust, the value is:

(i) 3.54 mg/m^3 if samples are collected for only one shift;

(ii) 3.77 mg/m^3 if samples are collected for two shifts;

(iii)3.89 mg/m^3 if samples are collected for three shifts;

(iv) 4.0 mg/m^3 if samples are collected for four or more shifts.

(2) For respirable quartz dust, the value is:

(i) 174 μg/m^3 if samples are collected for only one shift;

(ii) 187 μg/m^3 if samples are collected for two shifts;

(iii) 194 μg/m^3 if samples are collected for three shifts;

(iv) 200 μg/m^3 if samples are collected for four or more shifts; and

(c) You adjust your plan, if necessary, to include all the dust control parameters that were in effect during verification sampling.

§ 70.214 For my longwall operation, under what circumstances may I (the operator) continue to use PAPRs to supplement engineering or environmental controls?

You may continue to use approved PAPRs for compliance purposes under the following conditions:

(a) You implement and maintain all feasible engineering or environmental controls on each shift;

(b) You implement and maintain the PAPR respiratory protection program as approved by the District Manager;

(c) No MSHA DO sample exceeds the applicable dust standards, and no MSHA sample for any miner working downwind of the DO and required to wear a PAPR exceeds two times the applicable dust standards; and

(d) You continue to look for improvements that you can make and implement feasible solutions when they become available that would maintain the environment of the miners required to wear PAPRs at or below the verification limits.

§ 70.215 What if an MSHA DO sample exceeds the applicable dust standard, or an MSHA sample for a miner required to wear a PAPR exceeds twice the applicable dust standard?

If an MSHA DO sample exceeds the dust standard you must:

(a) Promptly review your dust control procedures to determine the cause of the high dust concentration levels and take appropriate action to prevent similar occurrences in the future;

(b) Promptly review the continued effectiveness of your approved PAPR respiratory protection program; and

(c) If necessary, make changes to your dust control parameters and submit them to the District Manager for review and approval.

Use of Verifiable Administrative Controls

§ 70.216 For my longwall operation, what must I (the operator) do in order to use verifiable administrative controls to supplement engineering or environmental controls?

In order to use administrative controls for longwall operations you must:

(a) Submit a revised ventilation plan to the District Manager within 5 days of receiving notification allowing you to supplement the engineering or environmental controls on your longwall for compliance purposes. The plan must include the feasible engineering or environmental controls being used to reduce the concentrations of respirable dust on your longwall to as low a level as possible, the verifiable administrative controls to be implemented on the MMU, and a method for ensuring that the administrative controls are complied with at all times;

(b) Obtain provisional approval of your ventilation plan from the District Manager;

(c) Have MSHA verify your plan's effectiveness by sampling all miners working along the longwall face, including the DO (Occ 044—longwall operator) or other occupation designated by the District Manager;

(d) Maintain and monitor compliance with the revised ventilation plan; and

(e) Continue to look for improvements that you can make and implement feasible solutions when they become available that would maintain the environment of the miners required to work downwind of the DO and whose exposure is being controlled by administrative controls at or below the verification limits.

§ 70.217 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating verifiable administrative controls?

MSHA will approve your interim ventilation plan and use of administrative controls on your longwall when:

(a) None of the verification samples exceed the critical values for respirable coal mine dust and quartz dust specified in § 70.209; and

(b) Adjust your plan if necessary, to include all the dust control parameters that were in effect during verification sampling.

§ 70.218 For my longwall operation with an approved interim ventilation plan, what must I (the operator) do if an MSHA sample exceeds the applicable dust standard?

If an MSHA sample exceeds the dust standard you must:

(a) Promptly review your dust control procedures to determine the cause of the excessive dust concentration(s) and take appropriate action to prevent similar occurrences in the future;

(b) Promptly review the continued effectiveness of the administrative controls in use; and

(c) If necessary, make changes to your dust control parameters and submit them to the District Manager for review and approval.

Actions Necessary When in Violation of Respirable Dust Standards

§ 70.219 What must I (the operator) do if I am cited for exceeding the applicable dust standard?

If you are cited for exceeding the dust standard, you must:

(a) Promptly review your dust control procedures to determine the cause of the excessive dust concentration(s); and

(b) Take corrective action to lower the concentration of respirable dust to comply with the applicable standard and notify the District Manager within 24 hours after implementing the corrective action(s). MSHA will then sample to determine the effectiveness of your abatement actions or require reverification of your ventilation plan under proposed § 70.203. If MSHA samples demonstrate:

(1) Compliance—you must incorporate these corrective actions in your mine ventilation plan. MSHA may re-verify your ventilation plan after determining that your dust control parameters originally approved may be ineffective in controlling the concentrations of respirable dust in the working environment of the MMU under the current mining conditions.

(2) Noncompliance—the District Manager may revoke approval of your mine ventilation plan.

Information to Be Posted on the Mine Bulletin Board

§ 70.220 What information must I (the operator) post on the mine bulletin board?

You must post the following information on the mine bulletin board:

(a) All MSHA sample results;

(b) For each MMU, the engineering and environmental controls and other practices in effect on each shift of the verification process, along with the associated values of the dust control parameters measured;

(c) All written notifications from the District Manager regarding any aspect of the plan verification process.

(d) You may remove the posted verification results after the District Manager approves the plan. You must post the results of MSHA respirable dust compliance samples upon receipt for 31 days.

Status Change Reports

§ 70.221 What action must I (the operator) take if the operational status of my mine, MMU, or DA changes?

(a) You must report the change in operational status of the mine, MMU, or DA to the MSHA District Office or to any other MSHA office designated by the District Manager. You must report status changes in writing within 3 working days after the status change has occurred.

(b) Each specific operational status is defined as follows:

(1) Underground mine:

(i) Producing—has at least one mechanized mining unit producing material.

(ii) Nonproducing—no material is being produced.

(iii) Abandoned—the work of all miners has been terminated and production activity has ceased.

(2) Mechanized Mining Unit:

(i) Producing—producing material from a working section.

(ii) Nonproducing—temporarily ceased production of material.

(iii) Abandoned—permanently ceased production of material.

(3) Designated Area:

(i) Producing—activity is occurring.

(ii) Nonproducing—activity has ceased.

(iii) Abandoned—the dust generating source has been withdrawn and activity has ceased.

PART 75—[AMENDED]

6. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

7. Paragraph (h) of § 75.370 of Subpart D is added to read as follows:

§ 75.370 Mine ventilation plan; submission and approval.

* * * * *

(h) The operator must record the amount of material produced by each MMU during each production shift, retain the records for six months, and make the records available to authorized representatives of the Secretary and the miners' representative.

8. Section 75.371 of Subpart D is amended by revising paragraphs (f) and (t) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(f) Section and face ventilation systems used, including drawings illustrating how each system is used; and a description of each different dust suppression system used on equipment on working sections, including any specific work practices used to minimize the dust exposure of individual miners, along with information on the location of the roof bolter(s) during the mining cycle for each continuous miner section, and the cut sequence for each longwall mining section. For plans required to be verified pursuant to § 70.201, the length of each normal production shift, the verification production level (VPL) as defined in § 70.2, and additional provisions for the use of powered, air purifying respirators (PAPRs) or verifiable administrative controls required under § 70.212–215 and § 70.216–218, respectively, must be included for each working section.

* * * * *

(t) The location of each ''designated area,'' and the respirable dust measures used at the dust generating sources for these locations.

PART 90—[Amended]

9. The authority citation for part 90 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h).

10. Subpart A is revised to read as follows:

Sec.
90.1 Scope.
90.2 Definitions.
90.3 Part 90 option; notice of eligibility; exercise of option.

§ 90.1 Scope.

This part 90 establishes the option of miners who are employed at underground coal mines or at surface work areas of underground coal mines and who have evidence of the development of pneumoconiosis to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below 1.0 milligrams per cubic meter of air. The rule sets forth procedures for miners to exercise this option, and establishes the right of miners to retain their regular rate of pay and receive wage increases. The rule also sets forth the operator's obligations. This part 90 is promulgated pursuant to section 101 of the Act and supercedes section 203(b) of the Act.

§ 90.2 Definitions.

(a) *Act* means the Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164, 30 U.S.C. 801 *et seq.*

(b) *Active workings* means any place in a coal mine where miners are normally required to work or travel.

(c) *Concentration* means an 8-hour MRE equivalent measure of the amount respirable dust per unit volume of air. The concentration of respirable dust is determined in two steps. First, divide the weight of dust in milligrams collected on the filter of an approved sampling device by 480 minutes times the sampler flow rate. Second, multiply that concentration by a constant factor prescribed by the Secretary for the approved sampling device used. The product is the equivalent concentration as measured with an MRE instrument.

(d) *District Manager* means the manager of the Coal Mine Safety and Health District in which the mine is located.

(e) *Mechanized mining unit* (MMU) means:

(1) A unit of mining equipment including hand loading equipment used for the production of material; or

(2) A specialized unit which utilizes mining equipment other than specified in § 70.206(c). MSHA assigns each MMU a four digit identification number. The MMU retains the identification number regardless of where the unit relocates within the mine. When two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment are be identified as a single MMU. When two or more MMUs are simultaneously engaged in the production of material within the same working section, each such MMU is identified separately.

(f) *MRE* means the Mining Research Establishment, of the National Coal Board, London, England.

(g) *MRE instrument* means the gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

(h) *MSHA* means the Mine Safety and Health Administration of the Department of Labor.

(i) *Normal work duties* means duties which the part 90 miner performs on a routine day-to-day basis in his or her job classification at a mine.

(j) *Part 90 miner* means a miner employed at an underground coal mine or at a surface work area of an underground coal mine who has exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or under § 90.3 (part 90 option; notice of eligibility; exercise of option) of this part to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air, and who has not waived these rights.

(k) *Quartz* means crystalline silicon dioxide (SiO_2) as measured by MSHA's Analytical Method P–7: Infrared Determination of Quartz in Respirable Coal Mine Dust.

(l) *Respirable dust* means dust collected with a sampling device approved by the Secretary and the Secretary of Health and Human Services in accordance with part 74 (Coal Mine Dust Personal Sampler Units) of this title. Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education, and Welfare are continued in effect.

(m) *Secretary* means the Secretary of Labor or a designee.

(n) *Secretary of Health and Human Services* means Secretary of Health and Human Services or Secretary of Health, Education, and Welfare.

(o) *Surface work area of an underground coal mine* means the surface areas of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting bituminous coal, lignite, or anthracite from its natural deposits underground by any means or method, and the work of preparing coal so extracted, and includes custom coal preparation facilities.

(p) *Transfer* means any change in the work assignment of a part 90 miner by the operator and includes:

(1) Any change in occupation code of a part 90 miner;

(2) Any movement of a part 90 miner to or from a mechanized mining unit; or

(3) Any assignment of a part 90 miner to the same occupation in a different location at a mine.

(q) *Underground coal mine* means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted.

§ 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at an underground coal mine or at a surface work area of an underground coal mine who, in the judgment of the Secretary of Health and Human Services, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of Health and Human Services, or based on other medical examinations shall be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air. Each of these miners shall be notified in writing of eligibility to exercise the option.

(b) Any miner who is a section 203(b) miner on January 31, 1981, shall be a part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment, shift and respirable dust protection.

(c) Any part 90 miner who is transferred to a position at the same or another coal mine shall remain a part 90 miner entitled to full rights under this part at the new work assignment.

(d) The option to work in a low dust area of the mine may be exercised for the first time by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who was eligible for the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(e) The option to work in a low dust area of the mine may be re-exercised by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who exercised the option under the old section 203(b).

12. Subpart B is revised to read as follows:

Subpart B—Dust Standards, Rights of Part 90 Miners

Sec.
90.100 Respirable dust standard.
90.101 Respirable dust standard when quartz is present.
90.102 Transfer; notice.
90.103 Compensation.
90.104 Waiver of rights; re-exercise of option.

Subpart B—Dust Standards, Rights of Part 90 Miners

§ 90.100 Respirable dust standard.

After the twentieth calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the part 90 miner in the active workings of the mine is exposed at or below 1.0 milligrams per cubic meter of air.

§ 90.101 Respirable dust standard when quartz is present.

When the respirable dust in the mine atmosphere of the active workings to

which a part 90 miner is exposed contains more than 5 percent quartz, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which a part 90 miner is exposed at or below a concentration of respirable dust computed by dividing the percent of quartz into the number 10. The application of the formula shall not result in a respirable dust standard in excess of 1.0 milligrams per cubic meter of air.

Example: The respirable dust associated with a part 90 miner contains quartz in the amount of 20%. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that part 90 miner shall be continuously maintained at or below 0.5 milligrams of respirable dust per cubic meter of air (10/20=0.5 mg/m^3).

§ 90.102 Transfer; notice.

(a) Whenever a part 90 miner is transferred in order to meet the respirable dust standard in § 90.100 (Respirable dust standard) or § 90.101 (Respirable dust standard when quartz is present), the operator shall transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. The operator may transfer a part 90 miner to a different coal mine, a newly-created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer.

(b) On or before the twentieth calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall give the District Manager written notice of the occupation and, if applicable, the mechanized mining unit to which the part 90 miner will be assigned on the twenty-first calendar day following receipt of the notification from MSHA.

(c) After the twentieth calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall give the District Manager written notice before any transfer of a part 90 miner. This notice shall include the scheduled date of the transfer.

§ 90.103 Compensation.

(a) The operator shall compensate each part 90 miner at not less than the regular rate of pay received by that miner immediately before exercising the option under § 90.3 (part 90 option; notice of eligibility; exercise of option).

(b) Whenever a part 90 miner is transferred, the operator shall compensate the miner at not less than the regular rate of pay received by that miner immediately before the transfer.

(c) The operator shall compensate each miner who is a section 203(b) miner on January 31, 1981, at not less than the regular rate of pay that the miner is required to receive under section 203(b) of the Act immediately before the effective date of this part.

(d) In addition to the compensation required to be paid under paragraphs (a), (b) and (c) of this section, the operator shall pay each part 90 miner the actual wage increases that accrue to the classification to which the miner is assigned.

(e) If a miner is temporarily employed in an occupation other than his or her regular work classification for two months or more before exercising the option under § 90.3 (part 90 option; notice of eligibility; exercise of option), the miner's regular rate of pay for purposes of paragraph (a) and (b) of this section is the higher of the temporary or regular rates of pay. If the temporary assignment is for less than two months, the operator may pay the part 90 miner at his or her regular work classification rate regardless of the temporary wage rate.

(f) If a part 90 miner is transferred, and the Secretary subsequently notifies the miner that notice of the miner's eligibility to exercise the part 90 option was incorrect, the operator shall retain the affected miner in the current position to which the miner is assigned and continue to pay the affected miner the applicable rate of pay provided in paragraphs (a), (b), (c) and (d) of this section, until:

(1) The affected miner and operator agree in writing to a position with pay at not less than the regular rate of pay for that occupation; or

(2) A position is available at the same coal mine in both the same occupation and on the same shift on which the miner was employed immediately before exercising the option under Sec. 90.3 (Part 90 option; notice of eligibility; exercise of option) or under the old section 203(b) program (36 FR 20601, October 27, 1971).

(i) When such a position is available, the operator shall offer the available position in writing to the affected miner with pay at not less than the regular rate of pay for that occupation.

(ii) If the affected miner accepts the available position in writing, the operator shall implement the miner's reassignment upon notice of the miner's acceptance. If the miner does not accept the available position in writing, the miner may be reassigned and protections under Part 90 shall not apply. Failure by the miner to act on the written offer of the available position within 15 days after notice of the offer is received from the operator shall operate as an election not to accept the available position.

§ 90.104 Waiver of rights; re-exercise of option.

(a) A part 90 miner may waive his or her rights and be removed from MSHA's active list of miners who have rights under part 90 by:

(1) Giving written notification to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, that the miner waives all rights under this part;

(2) Applying for and accepting a position in an area of a mine which the miner knows has an average respirable dust concentration exceeding 1.0 milligrams per cubic meter of air or the respirable dust standard established by § 90.101 (Respirable dust standard when quartz is present); or

(3) Refusing to accept another position offered by the operator at the same coal mine that meets the requirements of §§ 90.100, 90.101 and 90.102(a) after MSHA dust sampling shows that the average respirable dust concentration in his or her present position exceeds 1.0 milligrams per cubic meter of air or the respirable dust standard established by § 90.101 (Respirable dust standard when quartz is present).

(b) If rights under part 90 are waived, the miner gives up all rights under part 90 until the miner re-exercises the option in accordance with § 90.3(e) (part 90 option; notice of eligibility; exercise of option).

(c) If rights under part 90 are waived, the miner may re-exercise the option under this part in accordance with § 90.3(e) (part 90 option; notice of eligibility; exercise of option) at any time.

13. Subpart C is revised to read as follows:

90.201 MSHA respirable dust sample reports; operator status change reporting requirement.
90.202 Operator status change reports.

§ 90.201 MSHA Respirable dust sample reports; Operator status change reporting requirement.

(a) The Secretary shall provide the operator with a report of the following data on the MSHA respirable dust samples as soon as practicable:

(1) The mine identification number;

(2) The mechanized mining unit, if any, within the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed in milligrams per cubic meter of air, for each valid sample;

(4) The average concentration of respirable dust, expressed in milligrams

per cubic meter of air, for all valid samples;

(5) The occupation code;

(6) The reason for voiding any samples; and,

(7) The Social Security Number of the part 90 miner.

(b) Upon receipt, the operator shall provide a copy of this report to the part 90 miner. The operator shall not post the original or a copy of this report on the mine bulletin board.

§ 90.202 Operator status change reports.

If there is a change in the status of a part 90 miner (such as entering a terminated, injured or ill status, or returning to work), the operator must report the change in the status of the part 90 miner to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing within 3 working days after the status change has occurred.

[FR Doc. 00–16149 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

30 CFR Part 72

RIN 1219–AB18

Determination of Concentration of Respirable Coal Mine Dust

AGENCIES: Mine Safety and Health Administration (MSHA), Labor. National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Proposed rule; notice of public hearings; close of record.

SUMMARY: The Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) will hold public hearings to receive comments on the joint notice of proposed rulemaking published in the **Federal Register** on July 7, 2000.

The proposal announced that the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) would find in accordance with sections 101 and 202(f)(2) (30 U.S.C. §§ 811 and 842(f)(2)) of the Federal Mine Safety and Health Act of 1977 (Mine Act) that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift (single, full-shift sampling). The Secretaries are proposing to rescind a previous 1972 finding by the Secretary of the Interior and the Secretary of Health, Education and Welfare, on the accuracy of single-shift sampling.

These hearings will be held pursuant to section 101 of the Mine Act.

Please also see the public hearing notice addressing verification of dust control plans (plan verification) published separately by MSHA in today's **Federal Register**.

DATES: If individuals or organizations wish to make an oral presentation for the record at the hearing, please submit your request at least five days prior to the hearing date. However, you do not have to make a written request to speak. Any unalloted time will be made available to persons making same-day requests.

The public hearings will be held on the following dates and locations:

(1) August 7, 2000 from 8:30 a.m.—5:00 p.m. (Day 1)
August 8, 2000 from 8:30 a.m.—12:00 p.m. (Day 2)(if necessary)
Morgantown, West Virginia

(2) August 10, 2000 from 8:30 a.m.—5:00 p.m. (Day 1)
August 11, 2000 from 8:30 a.m.—12:00 p.m. (Day 2) (if necessary)
Prestonsburg, Kentucky

(3) August 16, 2000 from 8:30 a.m.—5:00 p.m. (Day 1)
August 17, 2000 from 8:30 a.m.—12:00 p.m. (Day 2) (if necessary)
Salt Lake City, Utah

To the extent possible, we would like to hear comments on the notices of proposed rulemaking in sequence. At each hearing site during the first part of Day 1 (until approximately 12:00 p.m.) we would like to hear comments on the single, full-shift sampling proposed rule. The second part of Day 1 we would like to hear comments on the plan verification proposal. If a second day of hearings is necessary at a hearing site, we would devote this time to hear comments on the plan verification proposal.

If necessary, the time can be extended each day to give all interested parties an opportunity to present testimony.

The rulemaking record will close on August 24, 2000.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send us your requests to make oral presentations at the public hearings. Clearly identify your requests and send them— (1) By mail to Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

The hearings will be held on the following dates and the following locations:

1. August 7 and 8,* 2000, Holiday Inn, 1400 Saratoga Avenue, Morgantown, West Virginia 26505, 304–599–1680.
2. August 10 and 11,* 2000, Holiday Inn, 1887 N US 23, Prestonsburg, Kentucky 41653, 606–886–0001.
3. August 16 and 17,* 2000, Hilton Salt Lake City Center, 255 S West Temple, Salt Lake City, Utah 84101, 801–328–2000.

*if necessary

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director; Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984; 703–235–1910.

I. Background

On July 7, 2000, the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) jointly published a notice of proposed rulemaking finding in accordance with sections 101 (30 U.S.C. 811) and 202(f)(2) (30 U.S.C. 842(f)(2)) of the Federal Mine Safety and Health Act of 1977 (Mine Act) that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries are proposing to rescind a 1972 finding by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, on the accuracy of such single-shift sampling.

II. Conduct of Public Hearings

The hearings will be conducted in an informal manner with a panel of MSHA and NIOSH representatives, chaired by Marvin W. Nichols, Jr. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA and NIOSH, followed by an opportunity for members of the public to make oral

presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentations may be limited. In the interest of conducting productive hearings, MSHA and NIOSH will schedule speakers in a manner that allows all points of view to be heard as effectively as possible. If necessary, the hearing time will be extended into the evening to allow interested parties an opportunity to speak.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. MSHA and NIOSH will make available copies of the hearing transcripts for public review.

MSHA and NIOSH will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA and NIOSH will be included in the rulemaking record.

III. Close of Rulemaking Record

To allow for the submission of post-hearing comments, the rulemaking record will close on August 24, 2000.

Dated: June 30, 2000.

Robert A. Elam,

Deputy Assistant Secretary for Mine Safety and Health.

Dated: June 30, 2000.

Linda Rosentock,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 00–17129 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75 and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearings; close of record.

SUMMARY: We will hold public hearings to receive public comments on a proposed rule published in the **Federal Register** on July 7, 2000. The proposal would revoke existing operator respirable dust sampling procedures under 30 CFR parts 70 and 90, and would require underground mine operators to verify the effectiveness of mine ventilation plans (plan verification).

These hearings will be held pursuant to section 101 (30 U.S.C. 811) of the Federal Mine Safety and Health Act of 1977 (Mine Act).

Please also see the joint public hearing notice published in today's **Federal Register** by the Department of Labor and the Department of Health and Human Services addressing single, full-shift sampling.

DATES: If individuals or organizations wish to make an oral presentation for the record, submit your request at least five days prior to the hearing date. However, you do not have to make a written request to speak. Any unalloted time will be made available to persons making same-day requests.

The public hearings will be held on the following dates and locations:

(1) August 7, 2000 from 8:30 a.m.–5:00 p.m. (Day 1)
August 8, 2000 from 8:30 a.m.–12:00 p.m. (Day 2) (if necessary)
Morgantown, West Virginia

(2) August 10, 2000 from 8:30 a.m.–5:00 p.m. (Day 1)
August 11, 2000 from 8:30 a.m.–12:00 p.m. (Day 2) (if necessary)
Prestonsburg, Kentucky

(3) August 16, 2000 from 8:30 a.m.–5:00 p.m. (Day 1)
August 17, 2000 from 8:30 a.m.–12:00 p.m. (Day 2) (if necessary)
Salt Lake City, Utah

To the extent possible, we would like to hear comments on the notices of proposed rulemaking in sequence. At each hearing site during the first part of Day 1 (until approximately 12:00 p.m.) we would like to hear comments on the single, full-shift sampling proposed rule. The second part of Day 1 we would like to hear comments on the plan verification proposal. If a second day of hearings is necessary at a hearing site, we would devote this time to hear comments on the plan verification proposal.

If necessary, the time can be extended each day to give all interested parties an opportunity to present testimony.

The rulemaking record will close on August 24, 2000.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send us your requests to make oral presentations at the public hearings. Clearly identify your requests and send them— (1) By mail to Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

The hearings will be held on the following dates at the following locations:

1. August 7 and 8,* 2000, Holiday Inn, 1400 Saratoga Avenue, Morgantown, West Virginia 26505, 304–599–1680.
2. August 10 and 11,* 2000, Holiday Inn, 1887 N US 23, Prestonsburg, Kentucky 41653, 606–886–0001.
3. August 16 and 17,* 2000, Hilton Salt Lake City Center, 255 S West Temple, Salt Lake City, Utah 84101, 801–328–2000.

* if necessary

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director; Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On July 7, 2000, we published a proposed rule which would revoke existing operator respirable dust sampling procedures under 30 CFR parts 70 and 90. The proposal would implement new regulations under which MSHA would verify the effectiveness of a mine operator's dust control parameters for mechanized mining units (MMUs) specified in the mine ventilation plan before these plans are approved. Verification sampling would be conducted under more typical production levels and for the actual length of the production shift. Please see the proposal published elsewhere in today's **Federal Register** for more information.

II. Conduct of Public Hearings

The hearings will be conducted in an informal manner, and chaired by Marvin W. Nichols, Jr. on behalf of MSHA. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentations may be limited. In the interest of conducting

productive hearings, we will schedule speakers in a manner that allows all points of view to be heard as effectively as possible. If necessary, the hearings will continue into the evening to allow all interested parties an opportunity to speak.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. We will make available copies of the hearing transcripts for public review.

We will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments and data submitted to us will be included in the rulemaking record.

III. Close of Rulemaking Record

To allow for the submission of post-hearing comments, the rulemaking record will remain open until August 24, 2000.

Dated: June 30, 2000.

Robert A. Elam,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 00–17128 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–43–P

Federal Register

Friday,
July 7, 2000

Part III

Department of Health and Human Services

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: General notice

SUMMARY: HRSA announces the availability of funds in the HRSA Preview for Summer 2000. This edition of the HRSA Preview is a comprehensive review of HRSA's Fiscal Year 2001 competitive grant programs.

The purpose of the HRSA Preview is to provide the general public with a single source of program and application information related to the Agency's competitive grant offerings. The HRSA Preview is designed to replace the multiple **Federal Register** notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs. In this edition of the HRSA Preview, HRSA's programs which provide funding for outpatient Hansen's Disease medical services and special projects for schools of public health have been included in the section ''Other HRSA Programs.'' It should be noted that additional program initiatives responsive to new or emerging issues in the health care area and unanticipated at the time of publication of the HRSA Preview may be announced through the **Federal Register** from time to time. Requirements appearing elsewhere in the **Federal Register** are not changed by this notice.

This notice contains nearly all of the content of the HRSA Preview. The HRSA Preview contains a description of competitive and other grant programs scheduled for awards in Fiscal Year 2001, and includes instructions on how to contact the Agency for information and receive application kits for all programs. Specifically, the following information is included in the HRSA Preview: (1) program title; (2) legislative authority; (3) purpose; (4) eligibility; (5) funding priorities and/or preferences; (6) estimated dollar amount of competition; (7) estimated number of awards; (8) estimated project period; (9) Catalog of Federal Domestic Assistance (CFDA) identification number; (10) application availability date; (11) letter of intent deadline (if any); (12) application deadline; (13) projected award date; and (14) programmatic contact, with telephone and e-mail addresses. Certain other information, including how to obtain and use the HRSA Preview and grant terminology can also be found in the HRSA Preview.

This issue of the HRSA Preview describes funding for the following HRSA discretionary authorities and programs (receipt deadlines are in parentheses):

Health Professions Programs

Model State-Supported Area Health Education Centers (12/18/00)
Basic/Core Area Health Education Centers (12/18/00)
Preventive Medicine Residency Programs (09/18/00)
Centers of Excellence (12/01/00)
Podiatric Residency Training in Primary Care (10/27/00)
Allied Health Projects (01/16/01)
Advanced Education Nursing Grants (01/29/01)
Partnerships for Developing Public Health Nursing Leadership (11/17/01)
Residencies in the Practice of Pediatric Dentistry and Residencies and Advanced Education in the Practice of General Dentistry (09/08/00)
Public Health Training Centers Grant Program (12/11/00)
Advanced Education Nursing Traineeship Grants (11/01/00)
Basic Nurse Education and Practice Grants (02/22/01)
Advanced Education Nursing—Nurse Anesthetist Traineeship Grant Program (11/01/00)
Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Baccalaureate Nursing Students (09/08/00)
Health Careers Opportunity Program (01/10/01)
Residency Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) (10/02/00)
Physician Assistant Training in Primary Care (01/12/01)
Academic Administrative Units in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) (12/08/00)
Faculty Development Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) (10/06/00)
Predoctoral Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) (11/03/00)
Faculty Loan Repayment Program (05/31/01)
Scholarships for Disadvantaged Students (12/15/00)
Geriatric Education Centers (01/04/01)

Primary Health Care Programs

National Primary Care Technical Assistance Grants and Cooperative Agreements (03/01/01 and 05/01/01)
National Health Service Corps Student/Resident Experiences and Rotations in Community Health (SEARCH) (05/01/01)
Health Care for the Homeless (deadline varies)
Grants to States for Loan Repayment Programs (05/15/01)
New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act (11/30/00; 2/28/01; and 5/15/01)
Community and Migrant Health Centers (deadline varies)
Nursing Education Loan Repayment Program (06/30/01)

HIV/AIDS Programs

Ryan White IV: Existing Geographic Areas (04/02/01)
Ryan White IV: New Geographic Areas (04/02/01)
Ryan White IV for Adolescent Services (04/02/01)
Funding for Early Intervention Services Grants: Existing Geographic Areas (10/02/00)
Funding for Early Intervention Services Grants: New Geographic Areas (07/16/01)
Funding for Early Intervention Services Planning Grants (06/01/00)

Maternal and Child Health Programs

Genetic Services, Improving Health of Children:
Implementation of the State Grants for the Integration of Programs and their Information Systems (02/28/01)
Genetic Services, Developing Models for the Use of New and Evolving Technology within Newborn Screening Programs (02/28/01)
Genetic Services, State Development Grants for Newborn Screening Efforts and Infrastructure Development (02/28/01)
Nationwide Blood Lead and Erythrocyte Protoporphyrin (EP) Proficiency Testing Program (09/15/00)
Integrated Health and Behavioral Health Care for Children, Adolescents, and their Families (01/31/01)
Innovative Models to Analyze and Address Racial, Ethnic, and Geographic Disparities in Maternal and Child Health Outcomes (02/05/01)
Integrated Comprehensive Women's Health Services in State MCH Programs (03/23/01)
Assuring Adequate Health Insurance for Children with Special Health Care Needs (02/02/01)

Healthy and Ready to Work (HRTW) Services for Children and Youth with Special Health Needs (CYSHN) (02/23/01)
Integrated Services (01/22/01)
Medical Home Development Grants (10/16/00)
Partnership for Information and Communication (PIC) (01/02/01)
MCH Cooperative Agreements (01/02/01)
Breastfeeding Promotion in Pediatrician's Office Practices (05/01/01)
Partners in Program Planning for Adolescent Health (04/20/01)
Maternal and Child Health Research Program (08/01/00 and 03/01/00)
Health Care Information and Education for Families of Children with Special Health Care Needs (12/01/00)
Graduate Medical Education in Obstetrics/Gynecology, Pediatrics and Family Practice in Historically/Predominately Black Medical Schools (02/01/01)
Public Health Training in Maternal and Child Health (12/15/00)
Long Term Training in Leadership Education in Neurodevelopmental and Related Disabilities (LEND) (10/12/00)
Continuing Education and Development (01/12/01)
Public Policy Analysis and Education Center for Infant and Early Childhood Health (03/26/01)
Public Policy Analysis and Education Center for Middle Childhood and Adolescent Health (03/26/01)
Continuing Education and Development Cooperative Agreement to Advance Education and Public Policy Development in Maternal and Child Health (02/01/01)
Continuing Education/Distance Learning (01/12/01)
Healthy Tomorrows Partnership for Children (10/02/00)
Healthy Tomorrows Partnership Cooperative Agreement (06/01/01)
State Systems Development Initiative (SSDI), MCH Services Federal Set-Aside Program (07/13/01)
EMSC Implementation (11/01/00)
EMSC Partnerships (11/01/00)
EMSC Targeted Issue (11/01/00)
Pediatric Injury Surveillance System (04/02/01)
Clinical practice Guidelines for Emergency Care of Children (06/01/01)
A Color-coded System for Equipment and Medication for Pediatric Resuscitation (03/01/01)
Traumatic Brain Injury (TBI), State Implementation Grants (12/01/01)
Traumatic Brain Injury (TBI), State Planning Grants (12/01/01)
State Mortality Review Support Program (01/29/01)
Perinatal Systems and Women's Health National Resource Center (02/23/01)
Healthy Start Initiative—Eliminating Disparities in Perinatal Health (02/06/01)
Interconception Care for High Risk Women and their Infants (02/16/01)
Improving Women's Health through Screening and Intervention for Depression during or around the Time of Pregnancy (12/21/00)
Healthy Start Initiative—State Infrastructure Initiatives (12/08/00)
Eliminating Disparities in Perinatal Health—Border Health (02/06/01)

Office of the Administrator

Community Access Program (06/01/00)
National Conference of State Legislatures (NCSL) (TBA)
Association of State and Territorial Health Officials (ASTHO) (TBA)
Public Health Foundation (PHF) (TBA)
National Association of County and City Health Officials (NACCHO) (05/30/00)
Pacific Islands Health Officers Association (06/01/00)

Rural Health Programs

Rural Health Roundtable, George Mason University (07/31/00)
State Rural Hospital Flexibility Program (05/25/01)
Rural Health Outreach Grant (10/16/00)
Rural Health Network Development (10/23/00)

Special Programs

Extramural Support Program for Projects to Increase Organ and Tissue Donations (05/01/01)

Other HRSA Programs

Outpatient Hansen's Disease Medical Services (09/01/00)
Special Projects for Schools of Public Health (TBA)
Lawton Chiles Foundation (N/A)

Individuals may obtain the HRSA Preview by calling the toll free number at 1–877–477–2123 (1–877–HRSA123). The HRSA Preview may also be accessed on HRSA's World Wide Web Home Page at http://www.hrsa.gov/grantsf.htm.

Dated: June 28, 2000.

Claude Earl Fox,

Administrator.

How To Use and Obtain Copies of the HRSA Preview

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions before contacting the toll-free number 1–877–477–2123 (1–877–HRSA–123). Likewise, we urge applicants to fully assess their eligibility for grants before requesting kits. As a general rule, no more than one kit per category will be mailed to applicants.

To Obtain a Copy of HRSA Preview

To have your name and address added to or deleted from the HRSA Preview mailing list, call the toll free number above or send a message by e-mail to hrsagac@hrsa.gov.

To Obtain an Application Kit

Applications kits differ depending on the grant program. Determine which kit(s) you wish to receive and call 1–877–477–2123 to be placed on the mailing list. Be sure to provide the information specialist with both the CFDA number and the title of the grant program. You may also request application kits using the e-mail address above. Application kits are generally available 60 days prior to application deadline. If kits are available earlier, they will be mailed immediately. The guidance contained in the various kits contains detailed instructions, background on the grant program, and other essential information, such as the applicability of Executive Order 12372 and 45 CFR Part 100, and additional inforamtion pertinent to the intergovernmental review process, as appropriate.

World Wide Web Access

The HRSA Preview is available on the HRSA Homepage via the World Wide Web at: www.hrsa.gov/grantsf.htm. You can download this issue in Adobe Acrobat format.

Application materials are also available for downloading for some HRSA programs. HRSA's goal is to post application forms and materials for all programs in future cycles.

You can register on-line to be sent grant application materials by following the instructions on the web page. Your mailing information will be added to our database and materials will be sent to you as they become available.

Grant Terminology

Application Deadlines

Applications will be considered on time if they are received on or before the established deadline, or postmarked on or before the deadline given in the program announcement or in the application kit materials. Applications sent to any address other than that specified in the application guidance are subject to being returned.

Authorization

The citation of the law authorizing the various grant programs is provided immediately following the title of the programs.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal programs, projects, services, and activities which provide assistance. Programs listed therein are given a CFDA Number. Be sure to use both the CFDA number and the title of the grant program when requesting an application kit. Note that CFDA numbers with alpha suffixes have different titles than the same CFDA numbers without suffixes.

Cooperative Agreement

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient is anticipated by the funding agency during performance of the project. The nature of that involvement will always be specified in the offering or application guidance materials.

Eligibility

The status an entity must possess to be considered for a grant. Authorizing legislation and programmatic regulations specify eligibility for individual grant programs, and eligibility may be further restricted for programmatic reasons. In general, assistance is provided to nonprofit organizations and institutions, State and local governments and their agencies, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The funding level listed is provided only as an estimate, and is subject to the availability of funds, Congressional action, and changing program priorities.

Funding Priorities and/or Preferences

Funding preferences, priorities, and special considerations may come from legislation, regulations, or HRSA program leadership decisions. They are not the same as review criteria. Funding preferences are any objective factors that would be used to place a grant application ahead of others without the preference on a list of applicants recommended for funding by a review committee. Some programs give preference to organizations which have specific capabilities such as telemedicine networking, or have established relationships with managed care organizations. Funding priorities are factors that cause a grant application to receive a fixed amount of extra rating points—which may similarly affect the order of applicants on a funding list. Special considerations are other factors considered in making funding decisions that are neither review criteria, preferences, or priorities, e.g., ensuring that there is an equitable geographic distribution of grant recipients, or meeting requirements for urban and rural proportions.

Key Offices

The Grants Management Office serves as the focal point for questions concerning business matters. In the HRSA Preview, a ''key'' symbol indicates the appropriate grants management office for each program area and the main telephone number for the office.

Letter of Intent

To help in planning the application review process, many HRSA programs request a letter of intent from the applicant in advance of the application deadline. Letters of intent are neither binding nor mandatory. Details on where to send letters can be found in the guidance materials contained in the application kit.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching or other cost-sharing requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Project Period

The total time for which support of a discretionary project has been programmatically approved. The project period usually consists of a series of budget periods of one-year duration. Once approved through initial review, continuation of each successive budget period is subject to satisfactory performance, availability of funds, and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

- That the estimated costs to the Government of the project are reasonable considering the level and complexity of activity and the anticipated results.
- That project personnel or prospective fellows are well qualified by training and/or experience for the support sought, and the applicant organization or the organization to provide training to a fellow have adequate facilities and manpower.
- That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.
- That the project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.
- That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.
- That, in so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which their applications will be judged by the reviewers.

Technical Assistance

A contact person is listed for each program and his/her e-mail address and telephone number provided. Some programs have scheduled workshops and conference calls as indicated by the ''magnifying glass'' in the HRSA Preview. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA web site at http://www.hrsa.dhhs.gov/ for the latest technical assistance information.

Frequently Asked Questions

1. Where do I submit grant applications?

The address for submitting your grant application will be shown in the guidance document included in the application kit.

2. How do I learn more about a particular grant program?

If you want to know more about a program before you request an application kit, an e-mail/telephone contact is listed. This contact person can provide information concerning the specific program's purpose, scope and

goals, and eligibility criteria. Usually, you will be encouraged to request the application kit so that you will have clear, comprehensive, and accurate information available to you. When requesting application materials, you must state the CFDA Number and title of the program. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide information about your program of interest if you are unable to find the information within the written materials provided.

In general, the program contact person provides information about the specific grant offering and its purpose, and the grants management specialist provides information about the grant mechanism and business matters, though there is often overlap of their responsibilities.

Information specialists at the toll-free number provide only basic information and administer mailings.

3. The dates listed in the HRSA Preview and the dates in the application kit do not agree. How do I know which is correct?

HRSA Preview dates for application kit availability and application receipt deadlines are based upon the best known information at the time of publication, often nine months in advance of the competitive cycle. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is generally correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit, and also posted on the HRSA home page.

4. Are programs announced in the HRSA Preview ever canceled?

Infrequently, announced programs may be withdrawn from competition. If this occurs, a cancellation notice will be provided through the HRSA Preview at the HRSA Homepage at http://www.hrsa.dhhs.gov/. If practicable, an attempt will be made to notify by mail those who have requested a kit for the canceled program.

If you have unanswered questions, please contact John Gallicchio of the Grants Policy Branch at 301–443–6507 (jgallicchio@hrsa.gov).

Bureau of Health Professions

Kids Into Health Careers Initiative

The Bureau of Health Professions announces a new initiative to increase diversity and cultural competency of the health professions workforce. The Kids Into Health Careers initiative is designed to expand the pool of qualified and interested applicants from minority and disadvantaged populations. The Bureau will give Special Consideration to qualified applicants to appropriate grant programs who participate in the Kids Into Health Careers initiative by working with primary and secondary schools that have a high percentage of minority and disadvantaged students. To receive this Special Consideration, applicants must establish linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

The programs with this Special Consideration include: Model State-supported Area Health Education Centers, Preventive Medicine Residency Programs, Centers of Excellence, Podiatric Residency Training in Primary Care, Allied Health Projects, Residencies in the Practice of Pediatric Dentistry * * * Public Health Training Grant Program, Health Careers Opportunity Program, Faculty Development Training in Primary Care, Residency Training in Primary Care, Predoctoral Training in Primary Care, Physician Assistant Training in Primary Care, Basic/Core Area Health Education Centers, Geriatric Education Centers, Advanced Education Nursing Grants, Basic Nurse Education and Practice Grants, Academic Administrative Units in Primary Care, and Partnerships for Developing Public Health Nursing Leadership.

All recipients of Bureau of Health Professions grants will receive a packet of information and guidance materials that can be used in working with local school systems.

Model State-Supported Area Health Education Centers 93.107

Legislative Authority: Public Health Service Act, Title VII, section 751, 42 U.S.C. 294a.

Purpose: The program assists schools to improve the distribution, supply, and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the development and operation of AHECs to implement educational system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational and clinical resources, the AHEC program establishes a network of health-related institutions to provide educational services to students, faculty and practitioners and ultimately to improve the delivery of health care in the service area. These programs are collaborative partnerships which address current health workforce needs within a region of a State or in an entire State.

Eligibility: The types of entities eligible to apply for this program include public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools, or the parent institutions of such schools. Applicants must also have previously received funds, but are no longer receiving funds under Section 751(a)(1) of the Public Health Service Act, and are operating an AHEC program.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Funds shall be awarded to approved applicants in the following order: (1) competing continuations, (2) new starts in States with no AHEC program, (3) other new starts, and (4) competing supplementals.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after

school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Matching Requirements: Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) recurring non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the Model State-Supported AHEC Program.

Estimated Amount of This Competition: $5,500,000.

Estimated Number of Awards to be Made: 13.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.107.

Application Availability Date: 10/02/00.

Letter of Intent Deadline: None.

Application Deadline: 12/18/00.

Projected Award Date: 05/01/01.

Program Contact Person: Louis D. Coccodrilli, MPH.

Phone Number: 301/443–6950.

e-mail address: *lcoccodrilli@hrsa.gov*

Basic/Core Area Health Education Centers 93.824

Legislative Authority: Public Health Service Act, Title VII, section 751, 42 U.S.C. 294a

Purpose: Cooperative Agreements are awarded to assist schools to improve the distribution, supply and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the planning, development and operation of AHECs to initiate education system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health sciences center with local planning, educational and clinical resources, the AHEC program establishes a network of community-based training sites to provide educational services to students, faculty and practitioners in underserved areas and ultimately, to improve the delivery of health care in the service area. The program embraces the goal of increasing the number of health professions graduates who ultimately will practice in underserved areas.

Eligibility: The types of entities eligible to apply for this program include public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools, or the parent institutions of such schools. Also, in States in which no AHEC program is in operation, an accredited school of nursing is an eligible applicant.

Funding Priorities or Preferences: As provided in section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Funds shall be awarded to approved applications in the following order: (1) competing continuations; (2) new starts in States with no AHEC program; (3) other new starts; and (4) competing supplementals.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Matching Requirements: Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the AHEC Program except that the Secretary may grant a waiver for up to 75 percent of the amount required in the first three years in which an awardee receives funds under Section 751(a)(1) of the Public Health Service Act.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards to be Made: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.824.

Application Availability Date: October 2, 2000.

Letter of Intent Deadline: None.

Application Deadline: December 18, 2000.

Projected Award Date: May 1, 2001.

Program Contact Person: Louis D. Coccodrilli, MPH.

Phone Number: 301 443–6950

E-Mail: lcoccodrilli@hrsa.gov

Preventive Medicine Residency Programs 93.117

Legislative Authority: Public Health Service Act, Title VII, section 768, 42 U.S.C. 295c

Purpose: The Secretary may make grants to and enter into contracts with accredited schools of medicine, osteopathic medicine, and public health to meet the cost to: (1) plan and develop new residency training programs and to maintain or improve existing residency programs in preventive medicine, and (2) to provide financial assistance to residency trainees enrolled in such program.

Eligibility: Eligible applicants are schools of medicine, osteopathic medicine and public health. An applicant must demonstrate to the Secretary that it has or will have available full-time faculty members with training and experience in the fields of preventive medicine and support from other faculty members trained in public health and other relevant specialties and disciplines.

Funding Priorities or Preferences: Under section 765 of the Public Health Service Act, a preference will be applied for applicants: (1) serving individuals who are from disadvantaged backgrounds (including underrepresented racial and ethnic minorities) and (2) graduating large proportions of individuals who serve in underserved communities. For established programs (who have graduated three or more classes), supporting information will be requested to determine qualification for the Preference.

For new programs (those having graduated three or fewer classes), applicant proposals will be evaluated by the criteria in the Public Health Service Act used to define a ''new program'' and must meet at least four of the following criteria to qualify for the funding preference:

(A) The mission statement of the program identifies a specific purpose of

the program as being the preparation of health professionals to serve underserved populations.

(B) The curriculum of the program includes content which will help to prepare practitioners to serve underserved populations.

(C) Substantial clinical training experience is required under the program in medically underserved communities.

(D) A minimum of 20 percent of the clinical faculty of the program spend at least 50 percent of their time providing or supervising care in medically underserved communities.

(E) The entire program or a substantial portion of the program is physically located in a medically underserved community.

(F) Student assistance that is linked to service in medically underserved communities following graduation is available to the students in the program.

(G) The program provides a placement mechanism for deploying graduates to medically underserved communities.

A priority will be applied for any applicant who: (1) requests funding for a ''new program'', as defined under Section 791[295j] of the Public Health Service Act as a program that has graduated less than three classes; or (2) meets the matching option of providing non-Federal matching funds obtained from public or private entities as set forth under Section 798 [295o] of the Public Health Service Act.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: 1.8 million dollars.

Estimated Number of Awards to be Made: Approximately 10–15 awards.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.117.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: September 18, 2000.

Projected Award Date: April 15, 2001.

Program Contact Person: Lee Norman Muecke, MD, MPH.

Phone Number: 301–443–0582.

E-mail: LMUECKE@HRSA.GOV

Centers of Excellence 93.157

Legislative Authority: Section 736 of The Public Health Service Act, 42 U.S.C. 293

Purpose: The goal of this program is to assist eligible schools in supporting programs of excellence in health professions education for under-represented minority individuals. The grantee is required to use the funds awarded: (1) To develop a large competitive applicant pool through linkages with institutions of higher education, local school districts, and other community-based entities and establish an education pipeline for health professions careers; (2) to establish, strengthen, or expand programs to enhance the academic performance of under-represented minority students attending the school; (3) to improve the capacity of such school to train, recruit, and retain under-represented minority faculty including the payment of stipends and fellowships; (4) to carry out activities to improve the information resources, clinical education, curricula and cultural competence of the graduates of the schools as it relates to minority health issues; (5) to facilitate faculty and student research on health issues particularly affecting under-represented minority groups, including research on issues relating to the delivery of health care; (6) to carry out a program to train students of the school in providing health services to a significant number of under-represented minority individuals through training provided to such students at community-based health facilities that provide such health services and are located at a site remote from the main site of the teaching facilities of the school; and (7) to provide stipends as appropriate.

Eligibility: Eligible applicants are accredited schools of allopathic medicine, osteopathic medicine, dentistry, pharmacy, graduate programs in behavioral or mental health, or other public and private nonprofit health or educational entities. Historically Black Colleges and Universities as described in section 736(c)(2)(A) and which received a contract under section 788B of the Public Health Service Act (Advanced Financial Distress Assistance) for fiscal year 1987 may apply for Centers of Excellence (COE) grants under section 736 of the Act.

Funding Preferences: NA.

Special Consideration: Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $7 million.

Estimated Number of Awards to be Made: 12.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.157.

Application Availability Date: 07/01/00.

Letter of Intent Deadline: NA.

Application Deadline: 12/01/00.

Project Award Date: 06/30/01.

Program Contact Person: Capt. Richard C. Valse, Jr.

Phone Number: 301–443–2100.

E-mail: Rvause@hrsa.gov

Podiatric Residency Training in Primary Care 93.181

Legislative Authority: Public Health Service Act, Title VII, Section 755, 42 U.S.C. 293k

Purpose: Grants are awarded to plan and implement projects in preventive and primary care training for podiatric physicians in approved or provisionally approved residency programs that shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

Eligibility: Schools of podiatric medicine or public or private nonprofit hospitals or other public or private nonprofit entities are eligible to apply.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically

underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $492,000.

Estimated Number of Awards to be Made: 4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.181.

Application Availability Date: July 1, 2000.

Application Deadline: October 27, 2000.

Projected Award Date: June 29, 2001.

Program Contact Person: Eleanor Crocker.

Phone Number: 301–443–1467.

E-mail: ecrocker@hrsa.gov

Allied Health Projects 93.191

Legislative Authority: Public Health Service Act, Title VII, section 755, 42 U.S.C. 294e.

Purpose: Grants are awarded to assist eligible entities in meeting the costs associated with expanding or establishing programs that will: (1) expand enrollments in allied health disciplines that are in short supply or whose services are most needed by the elderly; (2) provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences; (3) establish community-based training programs that link academic centers to rural clinical settings; (4) provide career advancement training for practicing allied health professionals; (5) expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained; (6) develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics; (7) expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly; (8) expand or establish demonstration centers to emphasize innovative models to link allied health, clinical practice, education, and research; and (9) meet the costs of projects to plan, develop, and operate or maintain graduate programs in behavioral and mental health practice.

Eligibility: Eligible entities are health professions schools, academic health centers, State or local governments or other public or private nonprofit entities. Eligible academic institutions shall also be required to use funds in collaboration with two or more disciplines.

Funding Priorities or Preferences: As provided in section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations so that new applicants may also compete equitably. A funding priority will be given to qualified applicants who provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900, 13021, and 13125. These will include such applicants as Asian-American and Pacific Islander Serving Institutions, Hispanic Serving Institutions, Historically Black Colleges and Universities, Tribal Colleges and Universities serving American Indians and Alaska Natives.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $1,200,000.

Estimated Number of Awards to be Made: 10–12.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 Years.

CFDA Number: 93.191.

Application Availability Date: 07/31/00.

Letter of Intent Deadline: N/A.

Application Deadline: 01/16/01.

Projected Award Date: 09/30/01.

Program Contact Person(s): Captain Norman L. Clark; Lt. Commander Young Song.

Phone Number: (301) 443–1346 or (301) 443–3353

E-mail address: nclark@hrsa.gov or *ysong@hrsa.gov*.

Partnerships for Developing Public Health Nursing Leadership 93.247A

Legislative Authority: Public Health Service Act, Title VII and Title VIII, 42 U.S.C.; Sections 765 and 811.

Purpose: The purpose of this program is to improve State and local public health infrastructure by enhancing the production and distribution of a highly qualified, diverse public health nurse workforce. A school of nursing and a school of public health are expected to collaborate in developing a program for public health nurse leaders. These cooperative agreements are expected to enhance master's educational programs (such as MSN and MPH) that prepare nurses for leadership in public health nursing with an emphasis on interdisciplinary practice in State and local public health agencies.

Eligibility: Eligible applicants are public and nonprofit private accredited collegiate schools of nursing and

accredited schools of public health. The applicant is required to document a partnership or plan for a partnership for cooperation between a school(s)/college(s) of nursing and a school of public health to meet project objectives. If the applicant is a school of nursing the partnership is to be with a school of public health; and if the applicant is a school of public health the partnership is to be with one or more schools of nursing.

The school of nursing, school of public health, and joint program of study are to include core public health sciences and strategies for interdisciplinary academic and practice learning experiences. The project plan is to address strategies for strengthening the nursing component in appropriate departments in the school of public health and strengthen interdisciplinary and population focused content offered by the school of nursing or jointly with the school of public health. The graduate is expected to be awarded a master's degree (in nursing and/or public health such as MPH, MHS, MSN or dual degree options) upon successful completion of the program of study.

Priorities or Preferences: Section 805 of the Public Health Service Act states that the Secretary shall give preference to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

The Secretary will grant a preference (as per Section 765 of the Public Health Service Act) to entities: (1) serving individuals who are from disadvantaged backgrounds (including underrepresented racial and ethnic minorities); and (2) graduating large proportions of individuals who serve in underserved communities.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $800,000 for FY 2001 depending on available funds.

Estimated Number of Awards to be Made: 4.

Estimated or Average Size of Each Award: $200,000 per year per grantee.

Estimated Project Period: Five (5) years, depending on approval of progress reports, availability of funds, and program priorities.

CFDA Number: 93.247A.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: Not required.

Application Deadline: November 17, 2000.

Projected Award Date: July 1, 2001.

Program Contact Persons: Irene Sandvold (301–443–6333) and Jennifer Burks (301–443–6853).

Application Availability: July 1, 2000.

Application Deadline: November 17, 2000.

Projected Award Date: July 1, 2001.

E-mail Address: jburks@hrsa.gov

Phone Numbers: 301–443–6333 and 301–443–6853.

Residencies in the Practice of Pediatric Dentistry 93.248 and Residencies and Advanced Education in the Practice of General Dentistry 93.897

Legislative Authority: Public Health Service Act, Title VII, section 747(a)(6), 42 U.S.C. 293k.

Purpose: These programs shall provide grants to assist schools in planning, developing, or operating programs, and to increase the number of training opportunities and to provide financial assistance to residents in post doctoral general and pediatric dentistry. These programs place particular emphasis on support of applications which encourage: (1) Practice in underserved areas; (2) provision of a broad range of pediatric and/or general practice dental services; (3) coordination and integration of care; (4) meeting the needs of special populations; and (5) recruitment and retention of under-represented minorities. Applicants are encouraged to detail manners in which the graduates of general dentistry residency will be well trained in meeting the treatment needs of the pediatric patient populations. For the upcoming grant cycle, all applications will be reviewed together as a single group during the peer review process.

Eligibility: To be eligible for a grant for residency training in the practice of pediatric or general dentistry, the applicant shall include entities that have programs in dental schools, approved residency programs in the pediatric or general practice of dentistry, approved advanced education programs in the pediatric or general practice of dentistry.

Funding Priorities and/or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings and has the principal focus of serving residents of medically/dentally underserved communities; or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Priority shall be given to qualified applicants that have a record of training the greatest percentage of providers, or that have demonstrated significant improvements in the percentage of providers which enter and remain in general or pediatric dentistry.

Priority shall be given to qualified applicants that have a record of training individuals who are from disadvantaged backgrounds (including racial and ethnic minorities under-represented in general or pediatric dentistry.)

An Administrative Priority shall be given to new programs that have enrollees and no graduates at the time of application, and newly initiated programs that have neither enrollees nor graduates at the time of application.

Special Consideration: Special Consideration will be given to projects that prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards to be Made: 12.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 Years.

CFDA Numbers:

General Dentistry: 93.897.

Pediatric Dentistry: 93.248.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: September 8, 2000.

Projected Award Date: April 30, 2001.

Program Contact Person: Susan Goodman, DDS; Stan Bastacky, DMD, MHSA.

Phone Number: 301 443–6326.

E-mail: sgoodman@hrsa.gov and *sbaskacky@hrsa.gov.*

Public Health Training Centers Grant Program 93.249.

Legislative Authority: Public Health Service Act, Title VII, Section 766, 42 U.S.C. 295a.

Purpose: The goal of the Public Health Training Centers Grant Program is to improve the Nation's public health system by strengthening the technical, scientific, managerial and leadership competencies and capabilities of the current and future public health workforce. Emphasis is placed on developing the existing public health workforce as a foundation for improving the infrastructure of the public health system and helping achieve the Healthy People 2010 Objectives. With respect to a public health training center, applicants must agree to: (1) Specifically designate a geographic area, including medically underserved populations, *e.g.,* elderly, immigrants/refugees, disadvantaged, to be served by the Center that shall be in a location removed from the main location of the teaching facility of the school participating in the program with such Center; (2) assess the public health personnel needs of the area to be served by the Center and assist in the planning and development of training programs to meet such needs; (3) establish or strengthen field placements for students in public or nonprofit private public health agencies or organizations; and (4) involve faculty members and students in collaborative projects to enhance public health services to medically underserved communities.

Eligibility: Eligible applicants include accredited schools of public health or other public or nonprofit private institutions accredited for the provision of graduate or specialized training in public health.

Funding Priorities And/or Preferences: In awarding grants or contracts under this authority, the Secretary shall give preference to accredited schools of public health.

Special Consideration: A Special Consideration will be given to qualified applicants who support the ''Kids Into Health Careers'' initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $5,000,000.

Estimated Number of Awards: 10–12.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 Years.

Application Deadline: 12/11/00.

CFDA Number: 93.249.

E-mail: jkress@hrsa.gov and *rmerrill@hrsa.gov*

Health Careers Opportunity Program 93.822.

Legislative Authority: Section 739 of the Public Health Service Act, 42 U.S.C. 293c

Purpose: The goal of the Health Careers Opportunity Program (HCOP) is to assist individuals from disadvantaged backgrounds to undertake education to enter a health profession. The HCOP program works to build diversity in the health fields by providing students from disadvantaged backgrounds an opportunity to develop the skills needed to successfully compete, enter, and graduate from health professions schools. The legislative purposes for which HCOP funds may be awarded are: (1) identifying, recruiting, and selecting individuals from disadvantaged backgrounds for education and training in a health profession; (2) facilitating the entry of such individuals into such a school; (3) providing counseling, mentoring, or other services designed to assist such individuals to complete successfully their education at such a school; (4) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education and health research training designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; (5) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program; (6) paying scholarships, as the Secretary may determine, for such individuals for any period of health professions education at a health professions school; (7) paying such stipends for such individuals for any period of education in student-enhancement programs (other than regular courses), except that such a stipend may not be provided to an individual for more than 12 months; (8) carrying out programs under which such individuals gain experience regarding a career in a field of primary health care through working at facilities of public or private nonprofit community-based providers of primary health services; and (9) conducting activities to develop a larger and more competitive applicant pool through partnerships with institutions of higher education, school districts, and other community-based entities.

Eligibility: Eligible applicants include schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatric medicine, public or nonprofit private schools that offer graduate programs in behavioral and mental health, programs for the training of physician assistants, and other public or private nonprofit health or educational entities.

Funding Preferences or Priorities: A funding preference will be given to approved applications for programs that involve a comprehensive approach by several public or nonprofit private health or educational entities to establish, enhance and expand educational programs that will result in the development of a competitive applicant pool of individuals from disadvantaged backgrounds who desire to pursue health professions careers. A comprehensive approach means a network of entities which are formally linked programmatically. The network must include a minimum of four entities: a health professions school, an undergraduate institution, a school district, and a community-based entity.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary,

middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Up to one third of available competitive funds will be reserved for applicants with approved proposals who have not received funding under this authority during the previous three years.

Estimated Amount of this Competition: $9,000,000.00.

Estimated Number of Awards to be Made: 23.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years and up to five years for approved applications that rank in the upper twentieth percentile.

CDFA Number: 93.822.

Application Availability Date: 07/01/00.

Letter of Intent/Pre-application Deadline: N/A.

Application Deadline: 01/10/01.

Projected Award Date: 08/01/01.

Contact Person: Capt. Richard C. Valse Jr.

Phone Number: 301–443–2100.

E-mail address: Rvause@hrsa.gov

Faculty Development Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) 93.895

Legislative Authority: Public Health Service Act, Title VII, Section 747,42 U.S.C. 293k.

Purpose: Grants are awarded to plan, develop and operate a program for the training of physicians who plan to teach in family medicine (including geriatrics), general internal medicine, general pediatrics, and to provide financial assistance (in the form of traineeships and fellowships) to physicians who are participating in any such program.

Eligibility: Accredited schools of medicine or osteopathic medicine, public or private nonprofit hospitals, or other public or private nonprofit entities are eligible to apply.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Special Consideration: Special consideration will be given to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Estimated Amount of This Competition:

Family Medicine: $4,435,366.

General Internal Medicine/General Pediatrics: $3,000,000.

Estimated Number of Awards to be Made:

Family Medicine: 31.

General Internal Medicine/General Pediatrics: 19.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period:

Family Medicine: 3 years.

General Internal Medicine/General Pediatrics: 3 years.

CFDA Number: 93.895.

Application Availability Date: July 1, 2000.

Application Deadline: October 6, 2000.

Projected Award Date: June 29, 2001.

Program Contact Person:

Family Medicine: Elsie Quinones.

General Internal Medicine/General Pediatrics: Elsie Quinones.

Phone Number: 301 443–1467.

E-mail:

Family Medicine: equinones@hrsa.gov

General Internal Medicine/General Pediatrics: equinones@hrsa.gov

Residency Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) 93.884.

Legislative Authority: Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose: Grants are awarded to assist graduate training programs in family medicine, general internal medicine and general pediatrics to expand and improve the quality of residency training programs that prepare graduates to enter primary care practice. Residency training programs should emphasize national innovations aimed at primary care residency education across disciplines.

Eligibility: Applicant must be an accredited public or private nonprofit school of allopathic medicine or osteopathic medicine or a public or private nonprofit hospital or other public or private nonprofit entity. Each allopathic program must be fully or provisionally accredited by the Accreditation Council for Graduate Medical Education. Each osteopathic program must be approved by the American Osteopathic Association.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A funding priority will be made available for applicants that can demonstrate training the greatest percentage of providers or demonstrating significant improvements in the percentage of providers which enter and remain in primary care practice. A second priority will be offered to applicants who can demonstrate a record of training individuals from disadvantaged backgrounds (including racial/ethnic minorities, under-represented in primary care practice).

Special Consideration: Special consideration will be given to projects that prepare practitioners to care for underserved populations and other high risk groups (i.e., elderly, HIV/ AIDS,

substance abusers, homeless and victims of domestic violence).

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition:

Family Medicine: $4,621,600

General Internal Medicine/General Pediatrics: $3,102,000.

Estimated Number of Awards to be Made:

Family Medicine: 28.

General Internal Medicine/General Pediatrics: 32.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period:

Family Medicine: 3 years.

General Internal Medicine/General Pediatrics: 3 years.

CFDA Number: 93.884.

Application Availability Date: July 1, 2000.

Application Deadline: October 2, 2000.

Projected Award Date: June 29, 2001.

Program Contact Persons:

Family Medicine: Ed Spirer

General Internal Medicine/General Pediatrics: Eleanor Crocker.

Phone Number: 301 443–1467.

E-Mail:

Family Medicine: espirer@hrsa.gov

General Internal Medicine/General Pediatrics: ecrocker@hrsa.gov

Predoctoral Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) 93.896

Legislative Authority: Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose: Grants are awarded to assist schools of medicine or osteopathic medicine to promote predoctoral training. The program assists schools in meeting the costs of projects to plan, develop and operate or participate in an approved predoctoral training program in the field of family medicine, general internal medicine, and general pediatrics. Proposed projects should seek to expand and enhance the quality of predoctoral initiatives: (1) Innovation, (2) Comprehensive Models, and (3) Establishment and Expansion of Required Clerkships.

Eligibility: Any accredited public or nonprofit private school of allopathic medicine or osteopathic medicine is eligible to apply.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Special Consideration: Special consideration will be given to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition:

Family Medicine: $4,500,200.

General Internal Medicine/General Pediatrics: $750,000.

Estimated Number of Awards to be Made:

Family Medicine: 28.

General Internal Medicine/General Pediatrics: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period:

Family Medicine: 3 years.

General Internal Medicine/General Pediatrics: 3 years.

CFDA Number: 93.896.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: September 4, 2000.

Application Deadline: November 3, 2000.

Projected Award Date: June 29, 2001.

Program Contact Person: Brenda Williamson.

Phone Number: 301 443–1467.

E-mail: bwilliamson@hrsa.gov

Physician Assistant Training in Primary Care. 93.886

Legislative Authority: Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose: Grants are awarded for projects for the training of physician assistants, and for the training of individuals who will teach in programs to provide such training. The program assists schools to meet the costs of projects to plan, develop and operate or maintain such programs.

Eligibility: Accredited schools of medicine, osteopathic medicine or other public or private nonprofit entities are eligible to apply. Eligible physician assistant programs are those which are either accredited by the American Medical Association's Committee on Allied Health Education and Accreditation (AMA–CAHEA) or its successor organization, the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

Funding Priorities and/or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A priority will be offered to applicants that can demonstrate a record of training individuals from disadvantaged backgrounds (including racial/ethnic minorities under-represented in primary care practice).

Special Consideration: Special Consideration will be given in awarding grants to projects which prepare

practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $2,353,000.

Estimated Number of Awards to be Made: 15.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.886.

Application Availability Date: July 1, 2000.

Application Deadline: January 12, 2001.

Projected Award Date: June 29, 2001.

Program Contact Person: Ellie Grant.

Phone Number: 301 443–1467.

E-mail: egrant@hrsa.gov

Academic Administrative Units in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) 93.984

Legislative Authority: Public Health Service Act, Title VII, section 747, 42 U.S.C. 293k

Purpose: Title VII authorizes funds to establish or expand teaching capacity in family medicine, general internal medicine and general pediatrics. Grant support is awarded to meet the costs of projects to establish, maintain or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine, general internal medicine, or general pediatrics. An academic unit in family medicine means a department or division of a school. Applications are being solicited for projects to address one or more of the following program purposes: (1) establishment of an academic unit, (2) expansion of an academic unit, and (3) research infrastructure development within the academic unit.

Eligibility: Public or private nonprofit accredited schools of allopathic medicine or osteopathic medicine are eligible to apply.

Funding Priorities and/or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A second preference is offered to qualified applicants for the establishment or the substantive expansion of an academic unit.

A priority will be available to those applicants that present collaborative projects between departments of primary care. The collaboration should involve the academic units of any two disciplines of family medicine, general internal medicine, and general pediatrics. There is a second priority (administrative) for establishment or expansion of research infrastructure proposals.

Special Consideration: Special consideration will be given to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of this Competition:

Family Medicine: $4,587,292.

General Internal Medicine/General Pediatrics: $1,300,000.

Estimated Number of Awards to be made:

Family Medicine: 29.

General Internal Medicine/General Pediatrics: 9.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period:

Family Medicine: 3 years.

General Internal Medicine/General Pediatrics: 3 years.

CFDA Number: 93.984.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: October 15, 2000.

Application Deadline: December 8, 2000.

Projected Award Date: June 29, 2001.

Program Contact Person: Lafayette Gilchrist.

Phone Number: 301 443–1467.

E-mail lgilchrist@hrsa.gov.

Faculty Loan Repayment Program 93.923

Legislative Authority: Public Health Service Act, Title VII, section 738(a), 42 U.S.C. 293b.

Purpose: The Faculty Loan Repayment Program (FLRP) encourages expansion of disadvantaged representation in health professions faculty positions. The program provides loan repayment, in amounts not to exceed $20,000 for each year of service, for individuals from disadvantaged backgrounds who agree to serve as members of the faculties of eligible health professions and nursing schools. Each recipient of loan repayment must agree to serve as a faculty member for at least two years.

Eligibility: Schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, nursing and graduate programs in behavioral and mental health are eligible to apply.

An individual is eligible to compete for participation in the FLRP if the individual is from a disadvantaged background and: (1) has a degree in medicine, osteopathic medicine, dentistry, nursing, or another health profession; (2) is enrolled in an approved graduate training program in one of the health professions listed above; or (3) is enrolled as a full-time student in an accredited (as determined by the Secretary) school listed above and is in the final year of training leading to a degree from an eligible school.

Funding Priorities or Preferences: Special consideration will be given to first-time applicants, applicants with a commitment from the employing institution to match the FLRP award, and to applicants who contribute to an even distribution of program participants with respect to geography and health care discipline.

Estimated Amount of This Competition: $800,000.

Estimated Number of Awards to be Made: 25.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: Not less than two years.

CFDA Number: 93.923.

Application Availability Date: 01/03/2001.

Letter of Intent Deadline (if applicable): N/A.

Application Deadline: 05/31/2001.

Projected Award Date: 9/01/2001.

Program Contact Persons: Jeff Potts, Barry Dubrow, Lorraine Evans.

Phone Numbers: 301–443–4240; 301–443–4021; 301–443–0785.

E-mail address: flrpinfo@hrsa.gov

Internet address: http://www.hrsa.gov/bhpr/dsa/flrp

Scholarships for Disadvantaged Students 93.925.

Legislative Authority: Public Health Service Act, Title VII, Section 737, 42 U.S.C. 293a.

Purpose: The Scholarships for Disadvantaged Students (SDS) program contributes to the diversity of the health professions student and practitioner populations. The program provides funding to eligible health professions and nursing schools to be used for scholarships to students from disadvantaged backgrounds who have financial need for scholarships and are enrolled, or accepted for enrollment, as full-time students at the eligible schools.

Eligibility: (1) Schools of allopathic medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, veterinary medicine, public health, nursing, chiropractic, or allied health, graduate programs in behavioral and mental health practice, or an entity providing programs for the training of physician assistants are eligible to apply and (2) Schools with a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups.

Funding Priorities or Preferences: An applicant must provide assurances that preference in providing scholarships will be given to students for whom the costs of attending the schools would constitute a severe financial hardship and to former recipients of Exceptional Financial Need and Financial Assistance for Disadvantaged Health Professions Students Scholarships.

A priority will be given to eligible entities that are health professions and nursing schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities.

Estimated Amount of This Competition: $38,000,000.

Estimated Number of Awards to be Made: 500.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 Year.

CFDA Number: 93.925.

Application Availability Date: 11/01/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 12/15/2000.

Projected Award Date: 03/31/2001.

Program Contact Person: Angie Lacy or Andrea Castle.

Phone Numbers: 301–443–5353; 301–443–1701.

E-mail address: dpolicy@hrsa.gov.

Geriatric Education Centers 93.969

Legislative Authority: Public Health Service Act, Title VII, section 753(a), 42 U.S.C. 294c.

Purpose: Grants are given to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, prevention of disease, disability, and other health problems of the aged. Projects supported under these grants must offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine. These projects must address one or more of the following statutory purposes: (a) improve the training of health professionals in geriatrics, including geriatric residencies, traineeships or fellowships; (b) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals; (c) support the training and retraining of faculty to provide instruction in geriatrics; (d) support continuing education of health professionals who provide geriatric care; and (e) provide students with clinical training in geriatrics in nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers.

Eligibility: Grants may be made to accredited health professions schools as defined by section 799B(1) of the PHS Act, which include schools of medicine, schools of dentistry, schools of osteopathic medicine, schools of pharmacy, schools of optometry, schools of podiatric medicine, schools of veterinary medicine, schools of public health, and schools of chiropractic; programs for the training of physician assistants as defined by section 799(B)(3), or schools of allied health as defined by section 799B(4), or schools of nursing as defined by section 801(2).

Applicants must be located in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

As provided in section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations.

A funding priority will be given to qualified applicants who provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900, and 13021. These will include such applicants as Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities serving Native Americans.

Special Consideration: A Special Consideration will be given to qualified applicants who support the ''Kids Into Health Careers'' initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and

disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $2,500,000.

Estimated Number of Awards to be Made: 14–18.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 years.

CFDA Number: 93.969.

Application Availability Date: 07/01/00.

Letter of Intent Deadline: N/A.

Application Deadline: 01/04/01.

Projected Award Date: 06/01/01.

Program Contact Person: Diane Hanner.

Phone Number: 1–301–443–6887.

e-mail address: dhanner@hrsa.gov.

Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Baccalaureate Nursing Students 93.359A

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose: The purpose of this request for applications is to provide seed money (up to $25,000 per grant) to assist eligible entities to strengthen the geriatric nursing didactic content and clinical components of the baccalaureate nursing program. Funds will be used to assist the applicant to plan, implement, and evaluate a geriatric nursing experience that will expose senior nursing students to: (1) increased course content in geriatric nursing and concepts of age sensitive care; (2) application of this content to geriatric patients with chronic illness residing in long term care facilities; and (3) use of assessment skills in the setting selected in order to accurately complete appropriate assessments using standardized tools such as the Minimum Data Set (MDS) required by Medicare regulations. This project should be implemented through a planned partnership with a geriatric long-term care facility.

Eligibility: Schools of nursing.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards to be Made: 10.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 Year.

CFDA Number: 93.359A.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: NA.

Application Deadline: September 8, 2000.

Projected Award Date: March 30, 2001.

Program Contact Person: Madeline Turkeltaub, PhD, CRNP, RN.

Phone Number: (301) 443–6193.

E-mail: mturkeltaub@hrsa.gov.

Advanced Education Nursing Grants 93.247

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions for projects that support the enhancement of advanced nursing education and practice. For the purpose of this section, advanced education nurses means individuals trained in advanced degree programs including individuals in combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse midwives, in certificate programs in existence on November 12, 1998, to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other appropriate public or private nonprofit entities.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $13,500,000.

Estimated Number of Awards to be Made: 61.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 Years.

CFDA Number: 93.247.

Application Availability: 07/01/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 01/29/2001.

Projected Award Date: 06/30/2001.

Program Contact Person: Joan Weiss, PhD, CRNP, RN.

Phone Number: 301–443–5486.

E-mail: jweiss@hrsa.gov

Advanced Education Nursing Traineeship Grants 93.358

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions to meet the cost of traineeships for individuals in advanced nursing education programs. Traineeships are awarded to individuals by participating educational institutions offering Master's and doctoral degree programs, combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse midwives, certificate programs in existence on November 12, 1998 to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses. The traineeship program is a formula program and all eligible schools will receive awards.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other appropriate public or private nonprofit entities.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Special Consideration: Traineeships for individuals in advanced education programs are provided under Section

811(a)(2) of the Public Health Service (PHS) Act. A statutory special consideration, as provided for in Section 811(f)(3) of the PHS Act, will be given to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under Section 332 of the PHS Act.

Estimated Amount of This Competition: $15,813,000.

Estimated Number of Awards to be Made: 300.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 Year.

CFDA Number: 93.358.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: NA.

Application Deadline: November 1, 2000.

Projected Award Date: April 30, 2001.

Program Contact Person: Marjorie Hamilton.

Phone Number: 301–443–6193.

e-mail address: mhamilton@hrsa.gov

Basic Nurse Education and Practice Grants 93.359

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose: Grants are awarded to enhance the educational mix and utilization of the basic nursing workforce by strengthening programs that provide basic nurse education, such as through: (1) Establishing or expanding nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities; (2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV–AIDS, substance abusers, the homeless, and victims of domestic violence; (3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems; (4) developing cultural competencies among nurses; (5) expanding the enrollment in baccalaureate nursing programs; (6) promoting career mobility for nursing personnel in a variety of training settings and cross-training or specialty training among diverse population groups; or (7) providing education for informatics, including distance learning methodologies.

Eligibility: Eligible applicants for purposes one and five are schools of nursing. Eligible applicants for purposes two, three, four, six, and seven are schools of nursing, nursing centers, academic health centers, State or local governments, and other appropriate public or private nonprofit entities.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $4,300,000.

Estimated Number of Awards to be Made: 20.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 Years.

CFDA Number: 93.359.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: February 22, 2001.

Projected Award Date: 06/30/2001.

Program Contact Person: Madeline Turkeltaub, PhD, CRNP, NP.

Phone Number: 1–301–443–6193.

e-mail address: mturkeltaub@hrsa.gov.

Advanced Education Nursing—Nurse Anesthetist Traineeship 93.124

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions for projects that support traineeships for licensed registered nurses enrolled as full-time students beyond the twelfth month of study in a Master's nurse anesthesia program. The traineeship program is a formula program and all eligible entities will receive awards.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other public and private nonprofit institutions which provide registered nurses with full-time nurse anesthetist education and have evidence of earned pre-accreditation or accreditation status from the American Association of Nurse Anesthetists (AANA) Council on Accreditation of Nurse Anesthesia Educational Programs.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Considerations: Traineeships for individuals in advanced education programs are provided under Section 811(a)(2) of the Public Health Service (PHS) Act. A statutory special consideration, as provided for in Section 811(f)(3) of the PHS Act, will be given to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under Section 332 of the PHS Act.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards to be Made: 70.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 Year.

CFDA Number: 93.124.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: November 1, 2000.

Projected Award Date: April 30, 2001.

*Program Contact Person:*Marcia Starbecker, MSN, RN.

Phone Number: 301 443–6193.

e-mail address: mstarbecker@hrsa.gov

Bureau of Primary Health Care

Community and Migrant Health Centers 93.224, 93.246

Legislative Authority: Public Health Service Act, Title III, Section 330, 42 U.S.C. 254b and 254b(g).

Purpose: The Community Health Center and Migrant Health Center (C/MHC) programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations. It is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their provision of services to medically underserved

populations. HRSA is committed to 100 percent access to primary care services with zero percent health disparities for the underserved. HRSA will open competition for awards under Section 330 of the Public Health Service Act (U.S.C. 254b for CHCs and U.S.C. 254b(g) for MHCs) to support health services in the areas served by these grants. Two hundred fifty-five C/MHC grantees will reach the end of their project period during FY 2001. Applications are due 120 days before the expiration date.

Matching or Cost Sharing Requirement: See the application guidance.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2001 and new organizations proposing to serve the same areas or populations currently being served by these existing programs.

Funding Priorities or Preferences: None.

Special Considerations: Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a C/MHC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Estimated Amount of This Competition: $254,000,000.

Estimated Number of Awards to be Made: 255.

Estimated or Average Size of Each Award: $1,000,000.

Estimated Project Period: 1–5 Years.

CFDA Number: 93.224 & 93.246.

Application Availability Date: Continuous.

Letter of Intent Deadline: N/A.

Application Deadline: Varies.

Projected Award Date: Varies.

Program Contact Person: 93.224 Cephas Goldman; 93.246 George Ersek.

Phone Number: Goldman—301–594–4300; Ersek—301–594–4301.

E-mail: gersek@hrsa.gov

City	State	Expiration date
HRSA Boston Field Office—(617) 565–1482		
Providence	RI	11/30/2000
Hope Valley	RI	11/30/2000
Boston	MA	12/31/2000
Willimantic	CT	12/31/2000
Pawtucket	RI	12/31/2000
Lubec	ME	12/31/2000
Woonsocket	RI	1/31/2001
Roxbury	MA (2)	1/31/2001
Truro	MA	1/31/2001
Lynn	MA	1/31/2001
Holyoke	MA	1/31/2001
Dorchester	MA	3/31/2001
Augusta	ME	3/31/2001
Bucksport	ME	3/31/2001
Lowell	MA	3/31/2001
Boston	MA	3/31/2001
St. Johnsbury	VT	3/31/2001
Eagle Lake	ME	3/31/2001
Worcester	MA	3/31/2001
Salem	MA	3/31/2001
Parsonfield	ME	5/31/2001
Newmarket	NH	5/31/2001
Waterville	ME	5/31/2001
HRSA New York Field Office—(212) 264–2664		
Ponce	PR	11/30/2000
Cortland	NY	11/30/2000
Newark	NJ	11/30/2000
Brooklyn	NY	11/30/2000
New York	NY	11/30/2000
Paterson	NJ	12/31/2000
Ossining	NY	12/31/2000
Rochester	NY (2)	12/31/2000
Florida	PR	12/31/2000
Pulaski	NY	12/31/2000
Buffalo	NY	12/31/2000
Bridgeton	NJ	12/31/2000
Jersey City	NJ	11/30/2000
Peekskill	NY	1/31/2001
Cidra	PR	1/31/2001
Hammonton	NJ	1/31/2001
Ciales	PR	1/31/2001
Brooklyn	NY	1/31/2001
Castaner	PR	3/31/2001
Patillas	PR	3/31/2001
Lares	PR	3/31/2001
Trenton	NJ	3/31/2001
Rincon	PR	3/31/2001
Albany	NY	3/31/2001
New York	NY	3/31/2001
Syracuse	NY	3/31/2001
Barceloneta	PR	5/31/2001
Newburgh	NY	5/31/2001
Bronx	NY	5/31/2001
Plainfield	NJ	5/31/2001
Jersey City	NJ	6/30/2001
HRSA Philadelphia Field Office—(215) 861–4422		
Baltimore	MD	11/30/2000
Newport News	VA	11/30/2000
Axton	VA	1/31/2001
Fredericktown	PA	1/31/2001
Hyndman	PA	1/31/2001
Stony Creek	VA	1/31/2001
Union	WV	1/31/2001
Wilkes-Barre	PA	1/31/2001
Sharon	PA	1/31/2001
Philadelphia	PA	1/31/2001
Broad Top City	PA	1/31/2001
Bastian	VA	1/31/2001
Martinsburg	WV	3/31/2001
Emporia	VA	3/31/2001
Lancaster	PA	3/31/2001
Baltimore	MD	3/31/2001
Beckley	WV	3/31/2001
Greensboro	PA	3/31/2001
York	PA	3/31/2001
Grantsville	WV	5/31/2001
Baker	WV	5/31/2001
Huntington	WV	5/31/2001
Roanoke	VA	6/30/2001
Baltimore	MD	6/30/2001
HRSA Atlanta Field Office—(404) 562–2996		
Chattanooga	TN	11/30/2000
Manson	NC	11/30/2000
Evergreen	AL	11/30/2000
Jackson	MS	11/30/2000
Louisville	KY	11/30/2000
Mound Bayou	MS	11/30/2000
Irvington	AL	11/30/2000
Morgantown	GA	11/30/2000
Raleigh	NC	11/30/2000
Fairfax	SC	11/30/2000
West Palm Beach	FL	12/31/2000
Faison	NC	12/31/2000
Wartburg	TN	12/31/2000
Biloxi	MS	12/31/2000
Sanford	FL	12/31/2000
Greenville	SC	1/31/2001
Lexington	KY	1/31/2001
Miami	FL(3)	1/31/2001
Pearl	MS	1/31/2001
Eastover	SC	1/31/2001
Richland	GA	1/31/2001
Columbia	SC	1/31/2001
Wade	NC	1/31/2001
Apopka	FL	1/31/2001
Benton	TN	1/31/2001
Meridian	MS	3/31/2001
Windsor	NC	3/31/2001
Charlotte	NC	3/31/2001
Warrenton	GA	3/31/2001
Rogersville	TN	3/31/2001
Tallahassee	FL	3/31/2001
Tampa	FL	3/31/2001
McClellanville	SC	3/31/2001
Ashland	MS	3/31/2001
Conway	SC	3/31/2001
Byhalia	MS	3/31/2001
Tuskegee	AL	3/31/2001
Laurel	MS	3/31/2001
Immokalee	FL	3/31/2001
Ruskin	FL	3/31/2001
Newton Grove	NC	3/31/2001
Johns Island	SC	3/31/2001
Lexington	KY	3/31/2001
Atlanta	GA	5/31/2001
Albany	GA	5/31/2001
McKee	KY	5/31/2001
Wadesboro	NC	5/31/2001
Ridgeland	SC	5/31/2001
Scottsboro	AL	5/31/2001
Hartsville	SC	5/31/2001
Yanceyville	NC	5/31/2001
Swainsboro	GA	6/30/2001
Lexington	MS	6/30/2001
Wilson	NC	6/30/2001
Ocilla	GA	6/30/2001
HRSA Chicago Field Office—(312) 353–1715		
Chicago	IL (2)	11/30/2000
Waukegan	IL	11/30/2000
Rockford	IL	11/30/2000
Baldwin	MI	11/30/2000
Oquawka	IL	12/31/2000
Chillicothe	OH	12/31/2000
Cincinnati	OH (3)	12/31/2000

City	State	Expiration date
Houghton Lake	MI	12/31/2000
Hillman	MI	1/31/2001
Barnesville	OH	1/31/2001
Piketon	OH	1/31/2001
Lakewood	WI	1/31/2001
Carterville	IL	3/31/2001
East Jordan	MI	3/31/2001
Grand Rapids	MI	3/31/2001
Greenville	OH	3/31/2001
Ironton	OH	5/31/2001
Cairo	IL	5/31/2001
Decatur	IL	5/31/2001
Marshfield	WI	5/31/2001
Algonac	MI	5/31/2001
Chicago	IL	6/30/2001
Springfield	IL	6/30/2001
Matteson	IL	6/30/2001
Indianapolis	IN	6/30/2001
HRSA Dallas Field Office—(214) 767–3872		
Plainview	TX	11/30/2000
El Paso	TX	11/30/2000
Dallas	TX	11/30/2000
Marianna	AR	11/30/2000
Sicily Island	LA	12/31/2000
Santa Fe	NM	12/31/2000
San Angelo	TX	12/31/2000
Rio Grande City	TX	1/31/2001
Lake Charles	LA	1/31/2001
Natchitoches	LA	1/31/2001
Oklahoma City	OK	1/31/2001
Portales	NM	1/31/2001
Portland	AR	1/31/2001
Pleasanton	TX	1/31/2001
Tulsa	OK	3/31/2001
Hatch	NM	3/31/2001
Hampton	AR	3/31/2001
Newton	TX	3/31/2001
Eagle Pass	TX	5/31/2001
Las Cruces	NM	5/31/2001
Santa Fe	NM	5/31/2001
Espanola	NM	5/31/2001
Dallas	TX	5/31/2001
Pine Bluff	AR	5/31/2001
Nacogdoches	TX	5/31/2001
Waco	TX	6/30/2001
HRSA Kansas City Field Office—(816) 426–5296		
Des Moines	IA	1/31/2001
Davenport	IA	1/31/2001
Mound City	MO	1/31/2001
Waterloo	IA	1/31/2001
Kansas City	MO(2)	3/31/2001
Pineville	MO	6/30/2001
Columbia	MO	6/30/2001
HRSA Denver Field Office—(303) 844–3203		
Alamosa	CO	11/30/2000
Howard	SD	11/30/2000
Rapid City	SD	12/31/2000
Sioux Falls	SD	12/31/2000
Colorado Springs	CO	12/31/2000
Denver	CO	12/31/2000
Billings	MT	1/31/2001
Lafayette	CO	1/31/2001
Billings	MT	3/31/2001
Pueblo	CO	5/31/2001
Green River	UT	5/31/2001
Black Hawk	CO	5/31/2001
HRSA San Francisco Field Office—(415) 437–8090		
Surprise	AZ	11/30/2000
Parlier	CA	11/30/2000
Stockton	CA	11/30/2000
Los Angeles	CA	11/30/2000
Tucson	AZ	12/31/2000
Marana	AZ	12/31/2000
San Diego	CA	12/31/2000
San Ysidro	CA	12/31/2000
Waianae	HI	1/31/2001
Los Angeles	CA (2)	1/31/2001
Ventura	CA	3/31/2001
Lamont	CA	3/31/2001
Buttonwillow	CA	3/31/2001
Merced	CA	3/31/2001
Oakland	CA (2)	3/31/2001
Los Angeles	CA	3/31/2001
Laytonville	CA	5/31/2001
Casa Grande	AZ	5/31/2001
Hilo	HI	6/30/2001
Gualala	CA	6/30/2001
San Pablo	CA	6/30/2001
Maui	HI	6/30/2001
Honolulu	HI	6/30/2001
HRSA Seattle Field Office—(206) 615–2491		
Othello	WA	11/30/2000
Portland	OR	11/30/2000
Salem	OR	11/30/2000
Klamath Falls	OR	12/31/2000
Toppenish	WA	1/31/2001
Seattle	WA (4)	1/31/2001
Chewelah	WA	1/31/2001
Payette	ID	1/31/2001
Nampa	ID	3/31/2001
Okanogan	WA	3/31/2001
Pasco	WA	5/31/2001
Tacoma	WA	5/31/2001
Roseburg	OR	6/30/2001
Sitka	AK	6/30/2001
Talkeetna	AK	6/30/2001
Spokane	WA	6/30/2001

Health Care for the Homeless 93.151

Legislative Authority: Public Health Service Act, Title III, Section 330(H), 42 U.S.C. 254B(H).

Purpose: The Health Care for the Homeless (HCH) program is designed to increase the access of homeless populations to cost-effective, case managed, and integrated primary care and substance abuse services provided by existing community-based programs/providers. It is the intent of HRSA to continue to support health services to the homeless people in these areas/locations given the continued need for cost-effective, community-based primary care services. Eighty-five HCH grantees will reach the end of their project period during FY 2001. Applications are due 120 days before the expiration date.

Matching or Cost Sharing Requirement: See the application guidance.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2001 and new organizations proposing to serve the same areas or populations currently being served by these existing programs.

Funding Priorities or Preferences: None.

Special Considerations: Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a HCH. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Estimated Amount of This Competition: $37,995,000.

Estimated Number of Awards to be Made: 85.

Estimated or Average Size of Each Award: $447,000.

Estimated Project Period: 1–5 Years.

CFDA Number: 93.151.

Application Availability Date: Continuous.

Letter of Intent Deadline: N/A.

Application Deadline: Varies.

Projected Award Date: Varies.

Program Contact Person: Monica Toomer.

Phone Number: 301–594–4430.

E-mail: mtoomerz@hrsa.gov

City	State	Expiration date
HRSA Boston Field Office—(617) 565–1482		
Boston	MA	10/31/2000
Providence	RI	10/31/2000
Springfield	MA	10/31/2000
Portland	ME	10/31/2000
Manchester	NH	10/31/2000
Worcester	MA	10/31/2000
Willimantic	CT	12/31/2000
Woonsocket	RI	1/31/2001
HRSA New York Field Office—(212) 264–2664		
New York	NY	10/31/2000
Santurce	PR	10/31/2000
New York	NY (5)	10/31/2000
Newark	NJ	10/31/2000
Peekskill	NY	1/31/2001
Trenton	NJ	3/31/2001
Jersey City	NJ	3/31/2001
HRSA Philadelphia Field Office—(215) 861–4422		
Richmond	VA	10/31/2000
Philadelphia	PA	10/31/2000
Baltimore	MD	10/31/2000
Newport News	VA	11/30/2000
Wilkes-Barre	PA	1/31/2001
Hunington	WV	5/31/2001

City	State	Expiration date
HRSA Atlanta Field Office—(404) 562–2996		
Clearwater	FL	10/31/2000
Nashville	TN	10/31/2000
Atlanta	GA	10/31/2000
Birmingham	AL	10/31/2000
Chattanooga	TN	10/31/2000
Ft. Lauderdale	FL	10/31/2000
Charleston	SC	10/31/2000
Raleigh	NC	11/30/2000
Louisville	KY	11/30/2000
Jackson	MS	11/30/2000
Lexington	KY	1/31/2001
Eastover	SC	1/31/2001
Tampa	FL	3/31/2001
HRSA Chicago Field Office—(312) 353–1715		
Green Bay	WI	10/31/2000
Dayton	OH	10/31/2000
Cleveland	OH	10/31/2000
Chicago	IL	10/31/2000
Lansing	MI	10/31/2000
Milwaukee	WI	10/31/2000
Minneapolis	MN	10/31/2000
Rockford	IL	11/30/2000
Cincinnati	OH	12/31/2000
Ironton	OH	5/31/2001
Algonac	MI	5/31/2001
HRSA Dallas Field Office—(214) 767–3872		
Albuquerque	NM	10/31/2000
New Orleans	LA	10/31/2000
Dallas	TX	10/31/2000
Houston	TX	10/31/2000
Plainview	TX	11/30/2000
Oklahoma City	OK	1/31/2001
Tulsa	OK	3/31/2001
HRSA Kansas City Field Office—(816) 426–5296		
Waterloo	IA	1/31/2001
Davenport	IA	1/31/2001
Kansas City	MO	3/31/2001
HRSA Denver Field Office—(303) 844–3203		
Denver	CO	10/31/2000
Casper	WY	10/31/2000
Colorado Springs	CO	12/31/2000
Rapid City	SD	12/31/2000
Billings	MT	3/31/2001
Pueblo	CO	5/31/2001
HRSA San Francisco Field Office—(415) 437–8090		
Sacramento	CA	10/31/2000
Honolulu	HI	10/31/2000
Oakland	CA (2)	10/31/2000
Santa Cruz	CA	10/31/2000
Santa Barbara	CA	10/31/2000
San Francisco	CA	10/31/2000
Martinez	CA	10/31/2000
Tucson	AZ	12/31/2000
San Diego	CA	12/31/2000
Merced	CA	3/31/2001
Lamont	CA	3/31/2001
Carson City	NV	5/31/2001
HRSA Seattle Field Office—(206) 615–2491		
Eugene	OR	10/31/2000
Tacoma	WA	10/31/2000
Salem	OR	11/30/2000
Portland	OR	11/30/2000
Anchorage	AK	11/30/2000
Nampa	ID	3/31/2001
Spokane	WA	6/30/2001

Grants to States for Loan Repayment Programs 93.165

Legislative Authority: Public Health Service Act, Title III, Section 338I, 42 U.S.C. 254Q–1.

Purpose: The purpose of these grant funds is to assist States in operating programs for the repayment of educational loans of health professionals in return for their practice in federally-designated Health Professional Shortage Areas to increase the availability of primary health services in health professional shortage areas. Of the estimated 38 awards, 9 are project period renewals. Further information about these activities can be obtained from the contact person.

Matching or Cost Sharing Requirement: States seeking support must provide adequate assurances that, with respect to the costs of making loan repayments under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for $1 of Federal funds provided in the grant. In determining the amount of non-Federal contributions in cash that a State has to provide, no Federal funds may be used in the State's match.

Eligibility: Any State is eligible to apply for funding.

Funding Priorities or Preferences: None.

Special Considerations: See ''Matching or Cost Sharing Requirement'' above.

Estimated Amount of This Competition: $3,000,000.

Estimated Number of Awards to be Made: 15.

Estimated or Average Size of Each Award: $200,000.

Estimated Project Period: 3 Years.

CFDA Number: 93.165.

Application Availability Date: 3/1/2001.

Letter of Intent Deadline: N/A.

Application Deadline: 5/15/2001.

Projected Award Date: 8/31/2001.

Program Contact Person: Susan Salter.

Phone Number: 301–594–4400.

E-mail: ssalter@hrsa.gov

National Primary Care Technical Assistance Grants and Cooperative Agreements 93.129A, 93.129B, 93.130A, 93.224

Legislative Authority: Public Health Service Act, Title III, Section 330 and Section 333, 42 U.S.C. 254B(K).

Purpose: The health center and National Health Service Corps (NHSC) programs deliver cost effective, high quality primary health care services to over 10 million underserved, vulnerable, low income, and minority populations. For more than twenty five years, these programs have been working toward ensuring the availability and accessibility of essential primary health services to the people in this country who have the most limited access to services. HRSA supports technical and non-financial assistance to federally-funded health centers and NHSC sites. It is the intent of HRSA to continue to support technical assistance for health center and NHSC site development and operations in the areas of increasing access to preventive and primary care, reduction of disparities of health outcomes, and improving the environmental/ occupational health of migrant and seasonal farmworkers.

HRSA will open competition for awards under Sections 330 and 333 of the Public Health Service Act, 42 U.S.C. 254B(k) to support national primary care technical assistance grants and cooperative agreements which will address access to health services, reductions in health disparities, and improvements in environmental/ occupational health for migrant and seasonal farmworkers. In addition to the application guidance, information about the activities associated with these opportunities can be obtained from the contact person listed below.

Matching or Cost Sharing Requirement: N/A.

Eligibility: Public and private nonprofit entities are eligible to apply.

Funding Priorities or Preferences: None.

Special Considerations: None.

Estimated Amount of This Competition: $10,000,000.

Estimated Number of Awards to be Made: 15.

Estimated or Average Size of Each Award: $665,000.

Estimated Project Period: 1–5 Years.

CFDA Numbers: 93.129A, 93.129B, 93.130A, 93.224.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: There will be two or more competitions under this

announcement. March 1, 2001 is the receipt deadline for the competition for projects to assist Migrant Health Centers and programs, and May 1, 2001 is the deadline for one or more other competitions for specific types of assistance to health centers. Application materials will contain separate guidances for each competition. Each guidance will indicate the applicable deadline as well as other relevant information.

Projected Award Date: Varies.

Program Contact Person: Lynn Specter.

Phone Number: 301–594–4488.

E-mail: lspector@hrsa.gov

Nursing Education Loan Repayment Program 93.908

Legislative Authority: Section 846(h) of the Public Health Service Act, 42 U.S.C. 297

Purpose: Under the Nursing Education Loan Repayment Program (NELRP), registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary, under which the Public Health Service agrees to repay up to 85 percent of the nurse's indebtedness for nursing education loans. In exchange, the nurse agrees to serve for a specified period of time in certain types of health facilities identified in statute.

Matching or Cost Sharing Requirement: N/A

Eligibility: Applicants must have completed all of their training requirements for registered nursing and be licensed prior to beginning service. Individuals eligible to participate must: (a) have received, prior to the start of service, a baccalaureate or associate degree in nursing; (b) have unpaid education loans obtained for nurse training; (c) be a citizen or National of the U.S.; (d) have a current unrestricted license in the State in which they intend to practice; and (e) agree to be employed for not less than two years in a full-time clinical capacity in: (1) an Indian Health Service Health Center; (2) a Native Hawaiian Health Center; (3) a public hospital (operated by a State, county, or local government); (4) a health center funded under Section 330 of the Public Health Service Act (including migrant, homeless, and public housing centers); (5) a rural health clinic (Section 1861 (aa)(2) of the Social Security Act); or (6) a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses.

Funding Priorities or Preferences: None.

Special Considerations: None.

Estimated Amount of This Competition: $2,279,000.

Estimated Number of Awards to be Made: 200.

Estimated or Average Size of Each Award: $11,400.

Estimated Project Period: N/A.

CFDA Number: 93.908.

Application Availability Date: 10/1/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 6/30/2001.

Projected Award Date: 9/30/2001.

Program Contact Person: Ms. Freddie Lapp.

Phone Number: 1–800–435–6464.

E-mail: flapp@hrsa.gov

National Health Service Corps Student/Resident Experiences and Rotations in Community Health (SEARCH) 93.130B

Legislative Authority: PHS Act, Subpart II, Sect.331[254d](a)(1).

Purpose: The purpose of the Student Resident Experiences and Rotations in Community Health (SEARCH) program is to assist States in increasing the availability of primary health care in urban and rural Federally designated health professional shortage areas by assisting public or non-profit community organizations to facilitate and strengthen community-academic linkages, and to increase the recruitment and retention of health care professionals in health professional shortage areas and medically underserved areas by expanding the number of high quality service-linked training opportunities available in these communities.

Matching or Cost Sharing Requirement: States seeking support are strongly encouraged to promote and seek outside funding to support other aspects of service-linked training opportunities such as leadership development. Such sources may include insurance companies, civic organizations, State and local governments, foundations, and network members.

Eligibility: Any State is eligible to apply for funding.

Funding Priorities or Preferences: Funds awarded under the National Health Service Corps SEARCH program are to be used to develop/support community-oriented practices which will offer service-linked training opportunities available in underserved communities for primary care students and residents.

Special Considerations: None.

Estimated Amount of This Competition: $3,300,000.

Estimated Number of Awards to be Made: 24.

Estimated or Average Size of Each Award: $140,000.

Estimated Project Period: 3 Years.

CFDA Number: 93.130B.

Application Availability Date: 10/1/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 5/1/2001.

Projected Award Date: 9/1/2001.

Program Contact Person: Jannette O'Neill-Gonzalez.

Phone Number: 301–594–4161.

E-mail: JOneill-Gonzalez@hrsa.gov.

New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act of 1996 93.224, 93.246, 93.151

Legislative Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 254b and 254b(h).

Purpose: The HRSA anticipates supporting the establishment of new service delivery sites for existing centers and/or new health centers in the Community and Migrant Health Centers and Health Care for the Homeless programs. The purpose of the Community/Migrant Health Centers program is to extend preventive and primary health services to populations currently without such services and to improve the health status of medically underserved individuals by supporting the establishment of new points of access to care. The Health Care for the Homeless program is designed to increase the homeless populations' access to cost-effective community-based programs/providers.

Matching or Cost Sharing Requirement: Communities seeking support are strongly encouraged to promote and seek outside funding and are required to maximize third party revenue to establish and maintain new service delivery sites.

Eligibility: Public and private non-profit entities are eligible to apply.

Funding Priorities or Preferences: Final priorities and/or preferences are included in the application materials.

Special Considerations: None.

Estimated Amount of This Competition: $10,000,000.

Estimated Number of Awards to be Made: 20–25.

Estimated or Average Size of Each Award: $200,000–450,000.

Estimated Project Period: 2 years or consistent with existing project period for currently funded organizations.

CFDA Numbers: 93.224, 93.246, 93.151.

Application Availability Date: 7/2000.

Letter of Intent Deadline: Ongoing. Letters of intent are encouraged for organizations seeking funding for a new delivery site. Letters of intent will be accepted beginning July 31, 2000. The submission of a letter of intent is recommended but not required in order

to submit an application to compete for funds in FY 2001. Information requirements to be included in the letter of intent submissions will be available in the application guidance.

Application Deadlines: Applications will be accepted beginning October 1, 2000. Applications received by November 30, 2000, will be reviewed with funding decisions announced by March 31, 2001. Applications received by February 28, 2001, will be reviewed with funding decisions announced by June 30, 2001. Applications received by May 15, 2001, will be reviewed with funding decisions announced by September 15, 2001. Applications received after May 15, 2001 will be considered for funding in FY 2002, depending on the availability of funds.

Projected Award Date: See above.

Program Contact Person: 93.224: Cephas Goldman 93.246: George Ersek 93.151: Jean Hochron.

Phone Numbers: 301–594–4300 Goldman; 301–594–4301 Ersek; 301–594–4437 Hochron.

E-mail: cgoldman@hrsa.gov, gersek@hrsa.gov, jhochron@hrsa.gov.

HIV/AIDS Bureau

Funding for Early Intervention Services Grants: Existing Geographic Areas 93.918A

Legislative Authority: PHS Act, Public Law 104–146, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Purpose: The purpose of Title III funding is to provide, on an outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected. All Title III programs must provide: HIV counseling and testing; counseling and education on living with HIV; appropriate medical evaluation and clinical care; and other essential services such as oral health care, outpatient mental health services and nutritional services, and appropriate referrals for specialty services.

Eligibility: Eligible applicants are public or nonprofit private entities that are 330 health centers, grantees funded under section 1001 regarding family planning, comprehensive hemophilia diagnostic and treatment centers, Federally qualified health centers, or nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV disease.

Limited Competition: Applicants are limited to public or nonprofit private entities that are currently funded Title III programs whose project periods expire in FY 2001 and new organizations proposing to serve the same populations currently being served by these existing projects. These areas are:

State	Service area
Alabama	Counties of Mobile and Baldwin.
	Counties of Calhoun, Etowah, Tallapoosa, Talladega, Dekalb, Cherokee, Cleburne, Randolph, St. Clair, Shelby, Blount and Chambers.
	Counties of Montgomery, Autaugua, Lowndes, Butler, Dallas, Chilton, Elmore, Macon, Bullock, Lee, Russell, Pike, Barbour, Dale, Geneva, Houston, Crenshaw, Conecuh, Coffee, Chambers, Tallapoosa, Wilcox and Monroe.
Alaska	Anchorage County, Anchorage Borough, Valdez-Cordova Census Area, Fairbanks North Star Borough.
Arkansas	Counties of Jefferson, Arkansas, Ashley, Chicot, Desha, Drew, Lincoln and Pulaski.
Arizona	Counties of Maricopa, Yavapai, Gila and Pinal.
	Counties of Santa Cruz, Greenlee, Cochise and Yuma.
	Pima County.
California	Counties of Santa Cruz and Monterey.
	Counties of San Bernardino, Riverside, Imperial and Sacramento.
	City of San Francisco.
	Alameda County.
	Kern County.
	Los Angeles County.
	Orange County.
	San Diego County.
	Santa Clara County.
	Ventura County.
Connecticut	Fairfield County.
	New Haven County.
District of Columbia	District of Columbia.
Florida	Counties of Collier, Hendry and Glades.
	Broward County.
	Dade County.
	Monroe County.
	St. Lucie County.
Georgia	Counties of Chatham, Effingham, Liberty, Bryan and Glynn.
	Counties of Fulton and Dekalb.
	Counties of Dougherty, Calhoun, Baker, Lee, Mitchell, Worth, Terrell, Colquitt, Thomas, Grady, Seminole, Miller, Early and Decatur.
	Counties of Ware, Bulloch, Candler, Evans, Toombs, Tattnall, Jeff Davis, Appling, Wayne, Coffee, Bacon, Pierce, Brantley, Atkinson, Charlton and Clinch.
	Fulton County.
	Richmond County.
Idaho	Counties of Ada, Boise, Elmore, Valley, Owyhee, Canyon, Gem, Payette, Washington, Adams, Butte, Bingham, Power, Bannock, Caribou, Oneida, Franklin and Bear Lake.
Illinois	Counties of Winnebago, Jo Daviess, Stephenson, Whiteside, Lee, Ogle, Boone, McHenry, Dekalb.
	Cook County.

State	Service area
Indiana	Marion County.
Iowa	Counties of Polk, Dallas, Story and Warren.
	Counties of Appanoose, Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jackson, Jefferson, Keokuk, Lee, Louisa, Mahaska, Monroe, Muscatine, Poweshiek, Scott, Van Buren, Wapello and Washington.
	Johnson County.
	Woodbury County.
Kansas	Sedgwick County.
Kentucky	Counties of McCracken and Pike.
Louisiana	Parishes of Calcasieu, Cameron, Beauregard, Allen, Jefferson and Davis.
	Parishes of Orleans, East Baton Rouge, St. Tammany, Washington, Iberville, St. Bernard, Acadia, Ascension, Assumption, Beuregard, Calcasieu, Concordia, East Feliciana, Iberia, Jackson and Lafayette.
Massachusetts	Counties of Bristol and Plymouth.
	Counties of Essex and Middlesex.
	Counties of Hampden and Franklin.
	Barnstable County.
	Norfolk County.
	Suffolk County.
	Worcester County.
Michigan	Counties of Oakland, Macomb, Lapeer, St. Clair and Monroe.
	Wayne County.
Mississippi	Counties of Quitman, Coahoma, Tate, Tallahatchie, Leflore, Lowndes, Bolivar, Tunica, Panola, Desoto and Marshall.
Missouri	Counties of Greene, Vernon, Barton, Jasper, Newton, McDonald, Cedar, St. Clair, Dade, Lawrence, Barry, Hickory, Polk, Christian, Stone, Taney, Dallas, Webster, Douglas, Ozark, Laclede, Wright, Pulaski, Texas, Howell, Phelps, Dent, Shannon and Oregon.
	Jackson County.
Montana	Counties of Yellowstone, Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Judith Basin, Lake, Lewis & Clark, Liberty, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Musseshell, Park, Petroleum, Phillips, Pondera, Powell, Prairie, Ravalli, Roosevelt, Rosebud, Sanders, Silver Bow, Stillwater, Sweet Grass, Teton, Tool, Treasure, Valley, Wheatland, Wibaux and Yellowstone National Park.
New Jersey	Counties of Middlesex, Union, Monmouth, Mercer and Somerset.
	Bergen County.
	Essex County.
	Passaic County.
New Mexico	Bernalillo.
Nevada	Washoe.
New York	Albany County.
	Bronx County.
	Erie County.
	Kings County.
	Monroe County.
	New York City/County.
	Onandaga County.
	Peekskill County.
	Queens County.
North Carolina	Counties of Durham, Wake, Orange, Granville, and Vance.
Ohio	Hamilton County.
Oklahoma	Oklahoma County.
Pennsylvania	City of Philadelphia.
	Lehigh County.
	Allegheny County.
	York County.
Puerto Rico	Humacao.
	Lares and Quebradillas Health Region.
	Gurabo and Caguas Health Region.
	Western Region-Anasco, Cabo Rojo, Guanica, Hormigueros, Isabela, Lajas, Las Marias, Maricao, Mayaguez, Moco, Sabana Grande, San German and San Sebastian.
Rhode Island	Counties of Providence, Bristol, Kent, Newport and Washington.
South Carolina	Fairfield County.
	Richland County.
	Sumter County.
Texas	Bexar County.
	Dallas County.
	Houston County.
	Tarrant County.
	Travis County.
Utah	Salt Lake County.
Vermont	Chittenden County.
Virginia	Charlottesville County.

State	Service area
Washington	King County. Yakima County.
Wisconsin	Counties of Adams, Calumet, Columbia, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Lafayette, Marquette, Richland, Rock, Sauk, Sheboygan, Waupaca, Waushara and Winnebago, Milwaukee County.

Funding Priorities and/or Preferences: Preference for funding will be given to projects that offer comprehensive primary care and support services to underserved people living with HIV and AIDS.

Estimated Amount of this Competition: $80,030,226.

Estimated Number of Awards to be Made: 108.

Estimated Project Period: 3 years.

CFDA Number: 93.918A.

Application Availability Date: June 19, 2000.

Letter of Intent: N/A.

Application Deadline: October 2, 2000.

Projected Award Date: January 1, 2001 and July 1, 2001.

Program Contact Person: Lois Eldred.

Phone Number: 301 443–3327.

E-mail: leldred@hrsa.gov

Funding for Early Intervention Services Grants: New Geographic Areas 93.918B.

Legislative Authority: PHS Act, Public Law 104–146, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Purpose: The purpose of Title III funding is to provide, on an outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected. All Title III programs must provide: HIV counseling and testing; counseling and education on living with HIV; appropriate medical evaluation and clinical care; and other essential services such as oral health care, outpatient mental health services and nutritional services, and appropriate referrals for specialty services.

Eligibility: Eligible applicants are public or nonprofit private entities that are 330 health centers, grantees funded under section 1001 regarding family planning, comprehensive hemophilia diagnostic and treatment centers, Federally qualified health centers, or nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV disease.

Funding Priorities or Preferences: In awarding these grants, preference will be given to approved/ unfunded applicants who submitted an application for funding in FY 2000 and to applicants who previously received Title III planning grants. Preference for funding may also be given to applicants which help to achieve an equitable geographic distribution of programs across all States and Territories, especially programs that provide services in rural or underserved communities where the HIV/AIDS epidemic is increasing.

Estimated Amount of this Competition: $26,100,000.

Estimated Number of Awards to be Made: 87.

Estimated Project Period: 3 years.

CFDA Number: 93.918B

Application Availability Date: April 16, 2001.

Letter of Intent: N/A.

Application Deadline: July 16, 2001.

Projected Award Date: September 28, 2001.

Program Contact Person: Lois Eldred.

Phone Number: 301 443–0735.

E-Mail Address: leldred@hrsa.gov

Funding for Early Intervention Services Planning Grants 93.918C

Legislative Authority: PHS Act, Public Law 104–146, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Purpose: The purpose of this grant program is to support communities and health care service entities in their planning efforts to develop a high quality and broad scope of primary health care services for people in their service areas who are living with HIV or at risk of infection. Applications must propose planning activities which will lead to the establishment of comprehensive outpatient HIV primary care services. This grant program supports activities of the planning process and does not fund any service delivery or patient care.

Eligibility: Eligible applicants must be public or nonprofit private entities that are, or intend to become, eligible to apply for the Title III Early Intervention Services grant. Applicants for these funds cannot be current Ryan White Title III Early Intervention Service Program grant recipients and must be located in rural or underserved communities where HIV primary health care resources remain insufficient to meet the need for services or plan for such services.

Funding Priorities and/or Preferences: In awarding these grants, preference will be given to applicants located in rural or underserved areas where emerging or ongoing HIV primary health care needs have not been adequately met.

Estimated Amount of this Competiton: $1,700,000.

Estimated Number of Awards to be Made: 34.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 year.

CFDA Number: 93.918C.

Application Availability Date: February 5, 2001.

Letter of Intent Deadine: N/A.

Application Deadline: June 1, 2000.

Projected Award Date: September 30, 2001.

Program Contact Person: Andrew Kruzich.

Phone Number: 301 443–0759.

E-Mail: akruzich@hrsa.gov

Funding for Early Intervention Services Planning Grants (CBC) 93.918D

Legislative Authority: PHS Act, Public Law 104–146, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Purpose: The purpose of this grant program is to support communities and health care service entities in their planning efforts to develop a high quality and broad scope of primary health care services for people in their service areas who are living with HIV or at risk of infection. Applications must propose planning activities which will lead to the establishment of comprehensive outpatient HIV primary care services. This grant program supports activities of the planning process and does not fund any service delivery or patient care.

Eligibility: Eligible applicants must be public or nonprofit private entities that are, or intend to become, eligible to apply for the Title III Early Intervention Services grant. Applicants for these funds cannot be current Ryan White Title III Early Intervention Service

Program grant recipients unless they are propose to open a new site in their current service area or in a new service area to serve communities of color highly impacted by HIV/AIDS. Applicants must also be organizations indigenous to the community of color which is defined as ''a community-based or public organization local to and supported by the community of color population proposed to be served.''

Funding Priorities and/or Preferences: In awarding these grants, preference will be given to applicants located in rural or underserved areas where there are many HIV+ community of color populations and ongoing HIV primary health care needs have not been adequately met. As indicated above, preference will also be given to applicants that are not currently Ryan White Title III Early Intervention Service Program grant recipients.

Estimated Amount of this Competition: $3,000,000.

*Estimated Number of Awards to be Made:*60.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: One year with possibility of second year transition grant.

CFDA Number: 93.918D.

Application Availability Date: February 5, 2001.

Letter of Intent: N/A.

Application Deadline: June 1, 2001.

Projected Award Date: September 30, 2001.

Program Contact Person: Andrew Kruzich.

Phone Number: 301 443–0759.

E-Mail: akruzich@hrsa.gov

Ryan White Title IV: Existing Geographic Areas 93.153A

Legislative Authority: Section 2671 of the Public Health Service Act, 42 U.S.C. 300FF–51—330FF–67.

Purpose: The purpose of the Title IV funding is to improve access to primary medical care, research, and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that: (1) Cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved at-risk and limited populations. Activities under these grants should address the goals of enrolling and maintaining clients in HIV primary care; increasing client access to research by linking development and support of comprehensive, community-based and family centered care infrastructures, and emphasizing prevention within the care system particularly the prevention of perinatal HIV transmission.

Eligibility: Eligible organizations are public or private non-profit entities that provide or arrange for primary care. Applicants are limited to currently funded Title IV programs whose project periods expire in FY 2001 and new organizations proposing to serve the same populations currently being served by these existing projects. These areas are:

State	Areas
AZ	Phoenix.
CA	Los Angeles.
CO	Denver.
FL	Jacksonville.
	Tampa.
GA	Atlanta.
MO	St. Louis.
NY	New York City (except Northern Manhattan).
	Albany.
	Bronx.
	Brooklyn.
NV	Las Vegas.
NC	Washington.
TN	Memphis.
TX	Dallas.
WI	Milwaukee.

Funding Priorities and/or Preferences: Preference for funding will be given to projects that support a comprehensive, coordinated system of HIV care serving children, youth, women and families and are linked with or have initiated activities to link with clinical trials or other research.

Estimated Amount of this Competition: $12,149,255.

Estimated Number of Awards to be Made: 16.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.153A.

Application Availability Date: December 18, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: April 2, 2001.

Projected Award Date: August 1, 2001.

Program Contact Person: Lydia Soto-Torres, MD.

Phone Number: 301 443–9051.

E-Mail: lsoto-torres@hrsa.gov

Ryan White Title IV: New Geographic Areas 93.153B

Legislative Authority: Section 2671 of the Public Health Service Act, 42 U.S.C. 300FF–51—330FF–67.

Purpose: Organizations should be able to demonstrate expertise in the coordination or provision of comprehensive medical and social services to children, youth, women and families. The purpose of the Title IV funding is to improve access to primary medical care, research and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that: (1) cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved, at-risk and limited populations. Activities under these grants should address the goals of: enrolling and maintaining clients in HIV primary care; increasing client access to research by linking HIV/AIDS clinical research trials and activities with comprehensive care; fostering the development and support of comprehensive, community-based and family centered care infrastructures; and emphasizing prevention within the care system particularly the prevention of perinatal HIV transmission

Eligibility: Eligible organizations are public or private nonprofit entities that provide or arrange for primary care. Applicants are limited to applicants in geographic areas where the HIV/AIDS epidemic is increasing among women, children and adolescents and where other resources targeted to these populations are limited or non-existent. Applications to serve the geographic areas listed below are NOT eligible for funding:

State	Areas
AL	Birmingham.
AK	Pine Bluff.
CA	Oakland.
	Fresno.
	San Diego.
	San Francisco.
CT	Bridgeport, New Haven, Stamford, Hartford.
DC	Statewide.

State	Areas
FL	Orlando.
	Ft Lauderdale.
	Miami.
	Palm Beach.
IL	Chicago.
LA	New Orleans.
	Baton Rouge.
MA	Boston.
	Brockton, New Bedford, Springfield, Worcester.
MD	Statewide.
MI	Detroit.
NH	Statewide.
NJ	Statewide.
NY	Queens/Elmhurst.
	New York City/Northern Manhattan.
	New York City/Lower Manhattan & Staten Island.
	Stonybrook/Suffolk.
NC	Charlotte.
	Asheville.
OH	Columbus.
PA	Philadelphia.
PR	San Juan.
RI	Statewide.
SC	Columbia.
TX	Ft. Worth.
	Houston.
	San Antonio.
WA	Seattle.

Funding Priorities and/or Preferences: Preference for funding may be given to applicants which help to achieve an equitable geographical distribution of programs across all States and Territories, especially programs that provide services in rural or underserved communities where the HIV/AIDS epidemic is increasing.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards To Be Made: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.153B.

Application Availability Date: 12/18/00.

Letter of Intent Deadline: Not applicable.

Application Deadline: April 2, 2001.

Projected Award Date: August 1, 2001.

Program Contact Person: Lydia Soto-Torres, MD.

Phone Number: (301) 443–9051.

E-Mail: lsoto-torres@hrsa.gov.

Ryan White Title IV for Adolescent Services 93.153C

Legislative Authority: Section 2671 of the Public Health Service Act, 42 U.S.C. 300FF–51—330FF–67.

Purpose: The purpose of this initiative is to foster and expand systems of health care and social support services for youth (age 13–24) at risk for or infected with HIV in order to identify infected youth and enroll them in HIV primary care. Grantees will identify additional HIV infected youth and develop, coordinate and provide support services to enroll and maintain them in primary medical care. Adolescent clients should be enrolled into care early in the spectrum of disease and managed throughout the infection. In partnership with other Ryan White funded programs or other agencies, applicants will integrate youth services into existing systems of care to provide access to comprehensive, coordinated primary care, research and social support services.

Eligibility: Eligible organizations are public or private nonprofit entities that provide or arrange for primary care.

Funding Priorities and/or Preferences: Priority will be given to applicants with a history of working with youth, especially youth infected with HIV. Priority will be given to projects proposed in geographic areas where epidemiologic data demonstrate high numbers of infected youth. Preference will be given to currently funded adolescent programs that have enrolled significant numbers of HIV infected youth into a primary care system during the previous project period.

Estimated Amount of This Competition: $1,973,000.

Estimated Number of Awards To Be Made: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

CFDA Number: 93.153C.

Application Availability Date: 12/18/2000.

Letter of Intent Deadline: not applicable.

Application Deadline: 04/02/01.

Projected Award Date: 08/01/01.

Program Contact Person: Lydia Soto-Torres, MD.

Phone Number: 301 443–9051.

E-Mail: lsoto-torres@hrsa.gov.

Maternal and Child Health Bureau

Genetic Services, Improving Health Of Children: Implementation of the State Grants for the Integration of Programs and their Information Systems 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this grant activity is to provide support for implementation activities to grantees who participated in the FY 1999 Genetic Services Branch's (GSB) ''Planning Grants for State Newborn Screening Efforts and Infrastructure Development.'' Specifically, these grants will fund the implementation of State Plans for integrated state information systems around newborn genetic screening developed under those planning grants. The ultimate purpose is to allow States to be able to provide preventive health data for public health functions and individual providers for improved clinical decision-making at the point of service delivery. States funded by this initiative must build on their planning grant activity and address the technical obstacles, legal barriers, partnerships required for the initiative, sustainability of the projects beyond Federal funding, and a plan for program evaluation.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: State health agencies with a previous GSB grant under, ''Planning Grants for State Newborn Screening Efforts and Infrastructure Development.''

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards: 5 to 7 States.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.110A.

Application Availability Date: December 15, 2000.

Letter of Intent Deadline: January 15, 2001.

Application Deadline: February 28, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Michele A. Lloyd-Puryear, M.D., Ph.D.

Phone Number: 301 443–1080.

E-Mail: Cdiener@hrsa.gov

Genetic Services—Developing Models for the Use of New and Evolving Technology Within Newborn Screening Programs 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this grant activity is to fund two projects that will address issues confronting newborn genetic screening programs that have emerged from the use of new and evolving technologies such as DNA-based and tandem mass technology within these newborn screening programs. One project will identify models and materials for addressing the financial, ethical, legal and social issues surrounding the use of this new technology. The other project will identify models and materials for addressing the clinical validity and utility of this new technology within

newborn screening programs. All projects must also address the assurance of informed consent, patient privacy rights, and protection against discrimination. It is proposed that the projects utilize the recommendations developed by the Newborn Screening Task Force, Serving the Family: From Birth to the Medical Home, Newborn Screening: A Blueprint for the Future: Recommendations from the Newborn Screening Task Force. It is expected that the projects will develop models and materials for the MCHB and for State newborn genetic screening programs.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $600,000.

Estimated Number of Awards: 2 States.

Estimated Project Period: 3 years.

CFDA Number: 93.110A.

Application Availability Date: December 15, 2000.

Letter of Intent Deadline: January 15, 2001.

Application Deadline: February 28, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Michele A. Lloyd-Puryear, M.D., Ph.D.

Phone Number: 301 443–1080.

E-Mail: Cdiener@hrsa.gov

Genetic Services, State Development Grants for Newborn Screening Efforts and Infrastructure Development 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of these development grants is to facilitate collaborative efforts and the development of integrated state information systems around newborn genetic screening. The grant activity would support the development of plans for: (1) The integration of the newborn genetic screening program with other points of early identification of children with genetic conditions and special health needs, (2) the integration of those systems of early identification with systems of early intervention, (3) the retrieval of information from State newborn genetic screening programs by private sector primary care providers, (if allowed by legislation), and (4) the facilitation of collaborative efforts among public health agency entities and between public health agencies and the private sector around newborn genetic screening.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: Community/State agency partnerships in coalition with public and private community-based providers.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,250,000.

Estimated Number of Awards: 15 States.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number: 93.110A.

Application Availability Date: December 15, 2000.

Letter of Intent Deadline: January 15, 2001.

Application Deadline: February 28, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Michele A. Lloyd-Puryear, M.D., Ph.D.

Phone Number: 301 443–1080.

E-Mail: Cdiener@hrsa.gov

Nationwide Blood Lead and Erythrocyte Protoporphyrin (EP) Proficiency Testing Program 93.110AA

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to improve nationwide the performance of laboratories which provide erythrocyte protoporphyrin (EP) screening tests and blood lead determinations for childhood lead poisoning prevention programs and, on request provide technical assistance and consultation to health care programs and providers responsible for the treatment and management of children and adults with elevated blood lead levels (EBBL). Accurate, timely EP and blood lead testing are critical to the prevention, diagnosis, treatment and management of children and adults with EBBL. The applicant organization must demonstrate: (1) The capacity to prepare, distribute and process proficiency testing samples for more than 400 participating laboratories, (2) the ability to remain current and knowledgeable in response to advancements in blood lead collection and testing technology, and (3) competence in the provision, as requested, of consultation and technical assistance nationwide to laboratories, programs and providers responsible for the delivery of health and health-related services to at-risk populations.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 1 year.

CFDA Number: 93.110AA.

Application Availability Date: July 14, 2000.

Application Deadline: September 15, 2000.

Projected Award Date: January 1, 2001.

Program Contact Person: Stuart Swayze.

Phone Number: 301 443–2917.

E-Mail: sswayze@hrsa.gov

Integrated Health and Behavioral Health Care for Children, Adolescents, and Their Families 93.110AF

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: These two-year planning grants are designed to initiate and formalize a working relationship among community resources, in order to detail arrangements for establishing an integrated program of health service delivery for children, adolescents and their families, in a targeted area with a total population of 100,000 to 250,000. The combined services are to include physical and psychosocial primary health care, comprehensive mental health services and substance abuse prevention and treatment services. The plan that is produced is to include attention to organizational structure, staffing, facilities, information systems including protection of confidentiality and fiscal arrangements.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $200,000.

Estimated Number of Awards: 4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number: 93.110AF.

Application Availability: November 29, 2000.

Letter of Intent Deadline: December 21, 2000.

Application Deadline: January 31, 2001.

Projected Award Date: May 1, 2001.

Program Contact Person: Sue Martone.

Phone Number: 301 443–4996.

E-Mail: smartone@hrsa.gov

Innovative Models to Analyze and Address Racial, Ethnic, and Geographic Disparities in Maternal and Child Health Outcomes 93.110AJ

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: Racial, ethnic, and geographic disparities in maternal and

child health outcomes continue to exist. The Maternal and Child Health Bureau is committed to identifying strategies for reducing the disparities. These two-year grants are designed to develop innovative models in the States to analyze and then address these disparities. The grants would cover both the analysis of data, and the development of a model program for addressing disparities. The collection, analysis, and presentation of data should serve as the basis for the implementation of a model program. Emphasis should be placed on innovative models both in terms of analysis and program implementation. Examples of grant activities could include: (1) Conducting trend analyses on maternal and child health outcomes for the purposes of needs assessments; (2) using data linkages and data sharing to obtain and analyze new information on disparities for the purposes of program development; or (3) innovative uses of geographic information systems for targeting vulnerable populations with plans for initiatives to reduce disparities.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities or Preferences: Any State or Jurisdiction or their designees.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $325,000 annually for two years.

Estimated Number of Awards to be Made: 4–6.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number: 93.110AJ.

Application Availability Date: December 4, 2000.

Letter of Intent Deadline: January 2, 2001.

Application Deadline: February 5, 2001.

Projected Award Date: May 1, 2001.

Program Contact Person: Dr. Michael Kogan.

Phone Number: 301 443–8041.

E-Mail: mkogan@hrsa.gov

Integrated Comprehensive Women's Health Services in State MCH Programs 93.110AK

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701

Purpose: The purpose of this program is to expand capacity in State MCH programs to improve women's health by providing a focal point for women's health and establishing linkages and building partnerships with community-based organizations, academic institutions, and federal agencies. This focal point will also identify gaps and establish an infrastructure for women's health services. Linkages will be established across programs, e.g., family planning, breast and cervical cancer, domestic violence, chronic disease, perinatal health, mental health, etc. The resulting integrated and coordinated system of care will provide comprehensive and continuous health services to women of reproductive age in general, as well as to those women who are pregnant or who have recently delivered to improve the overall health of women, their infants and families.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C.450b) is eligible to apply.

Funding Priorities or Preferences: State/Territorial MCH Title V agencies, tribal health agencies or their designees (details will be given in the application guidance). There may be only one application per State.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $800,000.

Estimated Number of Awards to be Made: 8.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.110 AK.

Application Availability Date: February 1, 2001.

Letter of Intent Deadline: February 23, 2001.

Application Deadline: March 23, 2001.

Projected Award Date: July 1, 2001.

Program Contact Person: Lisa King.

Phone Number: (301) 443–9739.

E-Mail: lking@hrsa.gov

Assuring Adequate Health Insurance for Children with Special Health Care Needs (CSHCN) 93.110C

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701

Purpose: This initiative will provide national leadership to assure that by the year 2010, all families of CSHCN will have adequate private and/or public insurance to pay for the services they need. Three key action steps have been identified to accomplish this objective: (1) Expand insurance for CSHCN without coverage; (2) assure access to services for insured CSHCN; and (3) strengthen the financing and reimbursement system.

Two cooperative agreements will engage in critical activities to achieve and monitor this objective:

- One cooperative agreement will focus on policy analysis of national and state legislative proposals to expand or improve health insurance to CSHCN; analysis of multiple national data sets to provide relevant policy information and monitor access to care for CSHCN in the public and private sector; and provide technical support to States on Medicaid and Child Health Improvement Program proposals impacting CSHCN.
- The second cooperative agreement will support the development and dissemination of financing strategies to assure adequate reimbursement for managed care organizations and providers. This includes analyzing the impact of various reimbursement methodologies on provider networks, access to care and risk selection; and developing partnerships with key stakeholders on financing care for CSHCN, especially in managed care.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities or Preferences: Public or nonprofit private entities involved in the study of insurance coverage and financing strategies for children with special health care needs.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $725,000.

Estimated Number of Awards: 2.

Estimated Project Period: 4 Years.

CFDA Number: 93.110C.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: January 2, 2001.

Application Deadline: February 2, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Lynda E. Honberg.

Phone Number: 301 443–2370.

E-Mail: Lhonberg@hrsa.Gov

Healthy and Ready to Work (HRTW) Services for Children and Youth with Special Health Needs (CYSHN) 93.110D

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: Establish 5 State HRTW model programs with funds targeted to prepare: (1) Youth and adolescents; (2) families; and (3) service systems for the transition of CYSHN to adult health care and related services, employment and independence. The funded models must assure that services go beyond medical rehabilitation to include engaged dialogue and counseling with CYSHN and their families that supports the setting of future goals and achieving ambitions for education, employment and independence. This should be provided developmentally from early childhood through age 25, with discussions and goal setting appropriate

to the child/adolescent/youth's age and maturity level and in a culturally competent context and setting. States will be required to confront the duplication of effort and lack of coordination that currently exists among state agencies serving this population. Services should include, but not be limited to: long-term health and disability management; access to independent living and personal assistance services (when not paid for by Medicaid); pre-vocational counseling and training; oral health; preparation of families for a changing role as CYSHN transition; and capacity building and training of the adult health care provider system to receive transitioning CYSHN.

Eligibility: 42 CFR Part 51a.3

Funding Priorities or Preferences: State Title V Children with Special Health Care Needs programs or their designees (details will be given in the application guidance).

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.110D.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: January 2, 2001.

Application Deadline: February 23, 2001.

Projected Award Date: June 30, 2001.

Program Contact Person: Thomas L. Gloss.

Phone Number: 301 443–2370.

E-Mail: tgloss@hrsa.gov

Integrated Services 93.110F

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701

Purpose: This initiative will support grants to states in partnership with communities to establish community integrated service systems for children with special health care needs (CSHCN), birth-8, and their families. States will be required to document coordination of effort among at least three of the six agencies of the State Interagency Coordinating Council (SICC) providing services to children. This must include common eligibility/enrollment application materials, shared data systems, blended funding, and a single coordinator with whom a family communicates. Applications must include documentation of partnerships with at least five communities which will model the community integrated service systems developed through this project.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $700,000.

Estimated Number of Awards: 4–6.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.110F.

Application Availability Date: November 15, 2000.

Letter of Intent Deadline: December 15, 2000.

Application Deadline: January 22, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Irene Forsman, M.S., R.N.

Phone Number: 301 443–2370.

E-Mail: iforsman@hrsa.gov

Medical Home Development Grants 93.110F

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701

Purpose: This initiative will support 3 year grants to develop a model of statewide medical home implementation for children with special health care needs (CSHCN) and their families. These models will serve as mentors for other States in the national delivery of comprehensive health care to children with special health care needs and their families. Projects will provide for coordination with the Title V needs assessment activities related to medical home, and project outcomes and evaluation will be incorporated into ongoing activities of the State Title V Block Grant.

Eligibility: 42 CFR 51a.3.

Funding Priorities or Preferences: Projects that can demonstrate statewide provision of medical homes for children with special health care needs.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $888,371.

Estimated Number of Awards: 6.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 Years.

CFDA Number: 93.110F.

Application Availability Date: August 15, 2000.

Letter of Intent Deadline: September 15, 2000.

Application Deadline: October 16, 2000.

Projected Award Date: March 31, 2001.

Program Contact Person: Tom Castonguay.

Phone Number: 301 443–2370.

E-mail: tcastonguay@hrsa.gov.

Health Care Information and Education for Families of Children with Special Health Care Needs 93.110S

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this competition is to support activities which will assist families and states with the implementation of a national network of State based centers comprised of families and professionals that will provide:

a. Health care information and education to families of children with special health care needs; and

b. Information that will assist the Division of Services for Children with Special Health Needs (DSCSHN) integrate these activities/outcomes into the Division's 2010 Strategic Planning activities.

Applicants must address the broad population of children with special health care needs by MCHB.

One Cooperative Agreement for a national organizational structure which will provide technical assistance, coordinate data collection nationwide, provide national training, related materials and other support as deemed necessary to all current state-based information centers and assist other states in planning for or implementing new state-based information centers. In addition, the Cooperative Agreement will be responsible for providing requested data concerning these state-based centers to DSCSHN for program planning purposes.

Funding is contingent upon the availability of funds.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: Nationally recognized family organizations with clearly demonstrated national expertise and capacity in addressing health issues related to CSHCN and their families.

Estimated Amount of This Competition: $500,000 per year.

Estimated Number of Awards to be Made: 1.

Estimated Project Period: 4 Years.

CFDA Number: 93.110S.

Application Availability Date: September 11, 2000.

Letter of Intent Deadline: October 16, 2000.

Application Deadline: December 1, 2000.

Projected Award Date: June 1, 2001.

Program Contact Person: Diana Denboba.

Phone Number: 301 443–2370.

E-mail: Ddenboba@HRSA.gov.

Partnership for Information and Communication (PIC) MCH Cooperative Agreements 93.110G

Purpose: To provide cooperative agreements with governmental, professional and private organizations represented by leaders concerned with issues related to maternal and child health and involved in sustaining systems of care and/or providing family support to persons affected by severe illness or injury. Specifically, this program is designed to facilitate the dissemination of new information in a format that will be most useful to them when developing MCH policies and programs in the private and public sectors at local state and national levels, and provides those individuals and organizations with a means of communicating issues directly to the Maternal and Child Health program and to each other. Organizations currently receiving support as part of this cooperative agreement represent State governors and their staffs; State and territorial health officials, nonprofit and/or for-profit managed care organizations and coalitions of organizations promoting the health of mothers and infants, national membership organizations representing survivors of traumatic brain injury (TBI), providers of emergency medical care for children and representing State Emergency Medical Services programs..

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Eligibility: 42 CFR Part 51a.3. To ensure continuity, membership for the organizations participating in PIC is rotated so that not all project periods coincide. For this year, only national membership organizations representing the following groups will be considered for funding: County health policymakers, municipal health policymakers, and State Head Injury Program Directors.

Funding Priorities and/or Preferences: N/A.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $800,000.

Estimated Number of Awards: 3.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 years.

Application Availability Date: November 1, 2000.

Letter of Intent Deadline: December 1, 2000.

Application Deadline: January 2, 2001.

Projected Award Date: April 1, 2001.

Program Contact Person: Sue Martone.

Phone Number: 301–443–4996.

E-mail: smartone@hrsa.gov.

Breastfeeding Promotion in Pediatrician's Office Practices 93.110H.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This grant program is designed to: (1) facilitate preparation of providers of obstetrical and pediatric health care in office settings to effectively promote and manage breastfeeding with the goal to move breastfeeding initiation and duration rates toward the Healthy People 2010 national health objectives; (2) implement strategies to enroll health care providers working with underserved population in breastfeeding promotion, support, and technical assistance programs; and (3) encourage collaborations between obstetrical, pediatric, and primary health care providers at the local, state, and regional levels.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: This competition is limited to:

- Nationally recognized organizations with clearly demonstrated national expertise and capacity for addressing breastfeeding promotion, support, and technical assistance issues related to providers of obstetrical and pediatric medical care to consumers and their families; and
- Applicants building upon current breastfeeding promotion and support partnerships with professional organizations and federal agencies.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $200,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 Years.

CFDA Number: 93.110H.

Application Availability Date: January 3, 2001.

Letter of Intent Deadline: March 1, 2001.

Application Deadline: May 1, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Carolyn Sharbaugh.

Phone Number: 301 443–9709.

E-mail: csharbaugh@hrsa.gov

Partners in Program Planning for Adolescent Health 93.110N

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The goal of this partnership with a group of national, membership organizations is to promote an adolescent health agenda among key professional disciplines likely to have encounters with adolescents and their families. It promotes the development of organizational infrastructure at national and state levels that can effectively address adolescent health issues; enhances intra- and inter-disciplinary communication, education and training needs relevant to adolescent health; and encourages the growth of collaborative effort across disciplines and professional organizations on behalf of adolescent health and well-being. In particular, member organizations will be expected to use the twenty critical adolescent health objectives contained in Healthy People 2010 as a framework for addressing selected adolescent health issues, based on the disciplinary expertise of the organization, and to contribute to States' efforts to improve the health status of adolescents. The organizational collaborative will approach its efforts from the perspective of positive youth development.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: National membership organizations representing the following disciplines: Health Education, Law, Medicine, Nutrition/Dietetics, Oral Health, Psychology, Psychiatry, Social Work, and Youth Services. Organizations representing a coalition of professional membership organizations affiliated with the specific discipline.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $500,000.

Estimated Number of Awards: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 years.

CFDA Number: 93.110N.

Application Availability Date: January 22, 2001.

Letter of Intent Deadline: February 23, 2001.

Application Deadline: April 20, 2001.

Projected Award Date: August 1, 2001.

Program Contact Person: Trina Menden Anglin, M.D., Ph.D.

Phone Number: 301 443–4291.

E-mail: Tanglin@HRSA.GOV

Maternal and Child Health Research Program 93.110RS

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to support applied research relating to maternal and child health services, which show promise of substantial contribution in knowledge, that when used in States and communities will result in health and health services improvements.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: Fifteen priority issues/questions selected from 11 broadly demarcated areas of program concern, and keyed to goals and objectives of the Bureau and HRSA strategic plans, will be given special consideration for funding. The special consideration consists of a 0.5 point adjustment to the priority score assigned to an application when recommended for support by the MCH Research Review Committee. Priority scores range from 1.0 to 5.0, with 1.0 representing the best score, and 5.0, the poorest. The 15 issues/questions selected from the 11 broadly demarcated areas of program concern are detailed in the guidance material contained in the application kit.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,900,000.

Estimated Number of Awards: 10.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 to 5 years.

CFDA Number: 93.110RS.

Application Availability Date: Continuously.

Letter of Intent Deadline: N/A.

Application Deadline: August 1, 2000 & March 1, 2001.

Projected Award Date: January 1, 2001 & July 1, 2001.

Program Contact Person: Gontran Lamberty, Dr.P.H.

Phone Number: 301 443–2190.

E-Mail: glamberty@hrsa.gov

Graduate Medical Education in Obstetrics/Gynecology, Pediatrics and Family Practice in Historically/Predominately Black Medical Schools 93.110TD

Legislative Authority: Social Security Act, Title V, Section 502, 42 U.S.C. 701.

Purpose: The primary purpose of this program is to enhance the education and training of residents in obstetrics, adolescent gynecology, family practice, and/or pediatrics in order to help them provide effective primary care for at-risk, underserved populations in community-based settings, reduce racial and cultural disparities in the health status of these populations, and address the special needs of children, adolescents, and families of African-American and Hispanic-American descent. These grants are also intended to stimulate the interest of high school and undergraduate students from traditionally underserved populations in careers in MCH-related health professions by improving the mentoring skills of residents in these education and training programs. This program is part of a longstanding Health Resources and Services Administration (HRSA) Initiative that is coordinated with other HRSA Bureaus and with HRSA's Office of Minority Health.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: Preference will be given to Departments of OB/GYN, Pediatrics and Family Medicine in Historically/Predominantly Black medical schools.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of this Competition: $685,000.

Estimated Number of Awards: 4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 years.

CFDA Number: 93.110TD.

Application Availability Dated: November 1, 2000.

Letter of Intent Deadline: December 1, 2000.

Application Deadline: February 1, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Aaron Favors, Ph.D.

Phone Number: 301 443–0392.

E-Mail: afavors@hrsa.gov

Public Health Training in Maternal and Child Health 93.110TK

Legislative Authority: Social Security Act, Title V, Section 502, 42 U.S.C. 702.

Purpose: The purpose of the Public Health Training in Maternal and Child Health program is to strengthen the Nation's maternal and child health public health system by broadening the leadership base of the current and future MCH workforce. Emphasis will be placed on developing the public health workforce through innovative strategies that address the special educational needs of health professionals who: live in isolated geographic communities; need to enhance or advance their skills while continuing to meet their daily on site work and family responsibilities; or are from underserved or underrepresented populations.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: Accredited schools of public health or other public or nonprofit private institutions accredited for the provision of graduate or specialized training in public health which are not currently receiving a grant under the MCH Training in Schools of Public Health grant program.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of this Competition: $324,000.

Estimated Number of Awards: 2.

Estimated Project Period: 3 Years.

CFDA Number: 93.110TK.

Application Availability Date: September 15, 2000.

Letter of Intent Deadline: October 16, 2000.

Application Deadline: December 15, 2000.

Projected Award Date: June 1, 2001.

Program Contact Person: Nanette Pepper, BSRN, M. Ed.

Phone Number: 301 443–2190.

E-Mail: npepper@hrsa.gov

Long Term Training in Leadership Education in Neurodevelopmental and Related Disabilities (Lend) 93.110TM

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of the Maternal and Child Health Interdisciplinary Leadership Education in Neurodevelopmental and Related Disabilities (LEND) program is to improve the health status of infants, children, and adolescents with, or at risk for, neurodevelopmental and related disabilities, including mental retardation, neurodegenerative and acquired neurological disorders, and multiple handicaps. The educational curricula emphasize the integration of services supported by State, local agencies, organizations, private providers and communities. The LEND programs will prepare health professionals to assist children and their families to achieve their developmental potentials by forging a community-based partnership of health resources and community leadership.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities or Preferences: Universities with an accredited medical school which have defined working departments providing graduate training in all requisite core disciplines identified in the program elements and requirements for MCH Interdisciplinary Leadership Education for Children with Neurodevelopmental and Related Disabilities. Such agreements may be either with components of the applicant institution or with one or more other institutions of higher learning through formal affiliation agreements. Although multiple institutions and programs may, and are encouraged to participate, the application must be submitted by the university at which the major medical and other health professions schools or departments are located. Programs must already be established in the specialization area for which application is made with documented graduates.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $10,300,000.
Estimated Number of Awards: 17 to 19.
Estimated or Average Size of Each Award: See the application guidance materials.
Estimated Project Period: 5 years.
CFDA Number: 93.110TM.
Application Availability Date: July 7, 2000.
Letter of Intent Deadline: August 7, 2000.
Application Deadline: October 12, 2000.
Projected Award Date: July 1, 2001.
Program Contact Person: Denise Sofka, M.P.H.
Phone Number: 301 443–0344.
E-Mail: dsofka@hrsa.gov

Continuing Education and Development 93.110TO

Legislative Authority: Social Security Act, Title V, Section 502, 42 U.S.C. 702.
Purpose: Continuing Education and Development (CED) focuses on increasing leadership skills of MCH professionals; facilitating timely transfer and application of new information, research findings and technology related to MCH; and updating and improving the knowledge and skills of health and related professionals in programs serving mothers and children. CED programs will support conduct of short-term, non-degree related courses, workshops, conferences, symposia, institutes, and distance learning strategies and/or development of curricula, guidelines, standards of practice, and educational tools/strategies intended to assure quality health care for the MCH population.
Eligibility: 42 CFR Part 51a.3.
Funding Priorities and/or Preferences: None.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount of This Competition: $300,000.
Estimated Number of Awards: 8–10.
Estimated or Average Size of Each Award: See the application guidance materials.
Estimated Project Period: 1–3 Years.
CFDA Number: 93.110TO.
Application Availability Date: November 1, 2000.
Letter of Intent Deadline: December 1, 2000.
Application Deadline: January 12, 2001.
Projected Award Date: June 1, 2001.
Program Contact Person: Diana L. Rule, M.P.H.
Phone Number: 301 443–2190.
E-Mail: drule@hrsa.gov

Continuing Education and Development Cooperative Agreement to Advance Education and Program/Policy Development in Maternal and Child Health 93.110TP.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.
Purpose: The purpose of the cooperative agreement(s) is to support a national program of continuing education and development (CED) focusing on education, information, and public health policy & programs in maternal and child health. This project will serve as an information/education resource that supports efforts in Title V data collection and analysis to assist in policy and program development and evaluation. Further, this project will provide continuing education and program/policy development efforts to improve standards/guidelines (i.e., Bright Futures); to improve practices/delivery of health care such as nutrition, oral health and mental health services for the MCH population; and support additional MCH program activities through workshops, institutes, seminars, and distance learning ventures.
Eligibility: 42 CFR Part 51a.3.
Funding Priorities or Preferences: None.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount of This Competition: Up to $4,000,000.
Estimated Number of Awards to be Made: Up to 2.
Estimated Project Period: 5 years.
CFDA Number: 93.110TP.
Application Availability Date: November 1, 2000.
Letter of Intent Deadline: December 1, 2000.
Application Deadline: February 1, 2001.
Projected Award Date: July 1, 2001.
Program Contact Person: Carol Galaty.
Phone Number: 301 443–2778.
E-Mail Address: cgalaty@hrsa.gov

Public Policy Analysis and Education Center for Infant and Early Childhood Health 93.110TP.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.
Purpose: The purpose of this Center is to analyze the effects of public policies, regulations, and practices at the community, State, and Federal levels on the health and well-being of infants and young children and their families. The Center's efforts will enhance the knowledge and inform the practices of practitioners and policy and decision-makers regarding the short and long-term consequences of public policies on the health, behavior and well-being of infants and young children. The Center's work will include the development of conceptual models for health and related services as well as analysis of the utility of various indicators of health status and well being for these age groups.
Eligibility: 42 CFR Part 51a.3.
Funding Priorities and/or Preferences: None.
Review Criteria: Final criteria are included in the application.
Estimated Amount of this Competition: $250,000.
Estimated Number of Awards: 1.
Estimated Project Period: 3 years.
CFDA Number: 93.110TP.
Application Availability Date: January 22, 2001.
Letter of Intent Deadline: February 19, 2001.
Application Deadline: March 26, 2001.
Projected Award Date: August 1, 2001.
Program Contact Person: Phyllis E. Stubbs-Wynn, M.D.
Phone Number: (301) 443–4489.
E-Mail: pstubbs@hrsa.gov.

Public Policy Analysis and Education Center for Middle Childhood and Adolescent Health 93.110TP

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.
Purpose: The purpose of this Center is to analyze the effects of public policies, regulations and practices at the community, State and Federal levels on the health, safety and well-being of school-aged children, adolescents and their families. As part of its analytical effort, the Center will use the framework of the twenty critical adolescent health objectives contained in Healthy People 2010 as it considers the effects of States' policies on adolescent health status. It will examine the following domains of health and related services for these age groups: content, organization, financing, quality, and accountability. The Center's efforts will enhance the knowledge and inform the practices of practitioners and policy and decision-makers regarding the short and long-term consequences of public policies on the health, behavior and well-being of different populations of school-aged children and adolescents. The Center's work will include the development of conceptual models for health and related services as well as analysis of the utility of various indicators of health status and well-being for these age groups. Given the importance of adolescence to the shaping of adult behavior and health, the Center will include a focus on developmental and institutional transitions between childhood and

adolescence and between adolescence and adulthood.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.110TP.

Application Availability Date: January 22, 2001.

Letter of Intent Deadline: February 19, 2001.

Application Deadline: March 26, 2001.

Projected Award Date: August 1, 2001.

Program Contact Person: Trina Menden Anglin, M.D., Ph.D.

Phone Number: 301 443–4291.

E-Mail: Tanglin@HRSA.GOV.

Continuing Education/Distance Learning 93.110TQ.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: Alternative education methodologies provide effective and efficient means by which maternal and child health (MCH) professionals can enhance and advance their managerial, analytical, administrative and clinical skills while continuing to meet their daily on-site responsibilities. These functions include assessing need; utilizing data; developing policies and programs; addressing and resolving problems; monitoring progress and evaluating performance. This grant program supports the development, implementation, creative utilization, application and evaluation of distance education opportunities for MCH health professionals. Projects will work collaboratively with each other and the MCH Bureau to provide technical assistance in distance education and technology to the MCH community.

Eligibility: 42 CFR Part 51a.3.

Funding Preferences and/or Priorities: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of Competition: $713,000.

Estimated Number of Awards: 3–4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.110TQ.

Application Availability Date: November 1, 2000.

Letter of Intent Deadline: December 1, 2000.

Application Deadline: January 12, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Aaron Favors, Ph.D.

Phone Number: 301 443–0392.

E-Mail: afavors@hrsa.gov

Healthy Tomorrows Partnership for Children 93.110V

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to support projects for mothers and children that improve access to health services and utilize preventive strategies. The initiative encourages additional support for the private sector and from foundations to form community-based partnerships to coordinate health resources for pregnant women, infants and children.

Eligibility: 42 CFR Part 51a.3.

Matching Requirement: The applicant must demonstrate the capability to meet cost participation goals by securing matching funds for the second through fifth years of the project. The specific requirements are detailed in the application materials.

Funding Priorities and/or Preferences: In the interest of equitable geographic distribution, special consideration for funding will be given to projects from States without a currently funded project in this category. These States are: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, South Carolina, Texas, Virginia, West Virginia, Wisconsin, Wyoming, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, and the Virgin Islands.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $450,000.

Estimated Number of Awards to be Made: Up to 9.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 Years.

CFDA Number: 93.110V.

Application Availability Date: August 1, 2000.

Letter of Intent Deadline: September 1, 2000.

Application Deadline: October 2, 2000.

Projected Award Date: March 1, 2001.

Program Contact Person: Maurice Bryant.

Phone Number: 301 443–2340.

E-Mail: mbryant@hrsa.gov.

Healthy Tomorrows Partnership Cooperative Agreement 93.110VA

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: To support activities which improve access and delivery of maternal and child health services through governmental and professional partnerships. Specifically, the program is designed to promote problem-solving approaches which enhance community and provider participation. This provider partnership will encourage private sector and other support for improved coordination of and access to health resources at the community-level for pregnant women, infants and children. Any national membership organization able to demonstrate that it represents a significant group(s) of providers of pediatric services will be considered for funding.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: N/A.

Specific program requirements include:

—Analysis of obstacles (issues and contributing factors) to provider participation in the delivery of maternal and child health services to low-income pregnant women and children, as well as involvement in problem-solving at the community level.

—Development of strategies to improve maternal and child health status and systems through collaboration with the Maternal and Child Health Bureau which promote problem solving at the community level; encourage provider participation; and encourage private sector and other support for improved coordination of and access to health resources at the community level.

—Dissemination and effective communication of concerns and information pertaining to the issues and strategies employed to their members and other national organizations.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $180,000.

Estimated Number of Awards to be Made: 1.

Estimated Project Period: Up to 5 years.

CFDA Number: 93.110VA.

Application Availability Date: April 2, 2001.

Letter of Intent Deadline: May 1, 2001.

Application Deadline: June 1, 2001.

Projected Award Date: September 30, 2001.

Program Contact Person: Maurice Bryant.

Phone Number: 301 443–2340.
E-Mail: mbryant@hrsa.gov.

State Systems Development Initiative (SSDI)—MCH Services Federal Set-Aside Program 93.110W

Legislative Authority: Social Security Act, Title V, Section 502(A)(1) 42 U.S.C. 701.

Purpose: The purpose of the State Systems Development Initiative is to assist State Agency MCH and CSHCN programs in the building of State and community infrastructure that results in comprehensive, community-based systems of care for all children and their families. During this time of government performance results accountability and demand for more accurate program data, the SSDI Program will be very focused. FY 01 applications must concentrate on Title V Block Grant needs assessment, performance and outcome measures, and the core Health Status Indicator #8 regarding Data Capacity. HRSA's strategic goal is ''Assure 100% access to health care and zero health disparities for all Americans.'' As part of their ongoing needs assessment activities, states will be expected to make vigorous and determined efforts to identify and eliminate health disparities. States will be expected to focus SSDI resources on establishing or improving the data linkages between birth records and (1) infant death certificates, (2) Medicaid eligibility or paid claims files, (3) WIC eligibility files, and (4) newborn screening files; and establishing or improving access to (1) hospital discharge surveys, (2) a birth defects surveillance system, (3) survey of recent mothers at least every two years, and (4) survey of adolescent health and behaviors at least every two years.

Eligibility: 42 CFR 51a.3. Competition is limited to competing renewal applications from the 59 State Title V agencies.

Funding Priorities and/or Preferences: N/A.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $5,300,000.

Estimated Number of Awards To Be Made: 59.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number: 93.110W.

Application Availability Date: February 13, 2001.

Letter of Intent Deadline: N/A.

Application Deadline: July 13, 2001.

Projected Award Date: September 30, 2001.

Program Contact Person: Jerry Hood, M.A.

Phone Number: 301–443–0870.
E-Mail: jhood@hrsa.gov.

EMSC Implementation 93.127A

Legislative Authority: Public Health Service Act Title XIX, Section 1910, 42 U.S.C. 300W–9.

Purpose: This implementation grant will improve the capacity of a State's EMS program to address the particular needs of children. The implementation grant is used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS, MCH, and CSHCN systems, using the experience and products of previous EMSC grantees. The applicant is encouraged to consider activities that: (1) address identified needs within their State EMS system and that lay the groundwork for permanent changes in that system; (2) develop or monitor pediatric EMS capacity; and (3) will be institutionalized within the State EMS system.

Eligibility: States and accredited schools of medicine are eligible applicants.

Funding Priorities or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.127A.

Application Availability Date: September 1, 2000.

Letter of Intent Deadline: October 2, 2000.

Application Deadline: November 1, 2000.

Projected Award Date: March 1, 2001.

Program Contact Person: Maria T. Baldi.

Phone Number: 301–443–6192.
E-Mail: mbaldi@hrsa.gov.

EMSC Partnerships 93.127C

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.

Purpose: State partnership grants will fund activities that represent the next logical step or steps to take to institutionalize EMSC within EMS and to continue to improve and refine EMSC. Proposed activities should be consistent with documented needs in the State and should reflect a logical progression in enhancing pediatric capabilities. For example, funding might be used to address problems identified in the course of a previous implementation grant; to increase the involvement of families in EMSC; to improve linkages between local, regional, or State agencies; to promulgate standards developed for one region of the State under previous funding to include the entire State; to devise a plan for coordinating and funding poison control centers; or to assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources.

Eligibility: States and accredited schools of medicine are eligible applicants.

Funding Priorities or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $700,000.

Estimated Number of Awards: 7.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.127C.

Application Availability Date: September 1, 2000.

Letter of Intent Deadline: October 2, 2000.

Application Deadline: November 1, 2000.

Projected Award Date: March 1, 2001.

Program Contact Person: Maria T. Baldi.

Phone Number: 301 443–6192.
E-Mail: mbaldi@hrsa.gov

EMSC Targeted Issue 93.127D

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.

Purpose: Targeted issue grants are intended to address specific, focused issues related to the development of EMSC knowledge and capacity with the intent of advancing the state-of-the-art, and creating tools or knowledge that will be helpful nationally. Proposals must have well-conceived methodology for analysis and evaluation. Targeted issue priorities have been identified based on the EMSC Five Year Plan. The targeted issue priorities are: cost-benefit analysis related to EMSC, implications of managed care for EMSC, evaluations of EMSC components, models for improving the care of culturally distinct populations, evaluation of systems for provision of emergency health care within day care and/or school settings, and evaluation of family-centered care models. Proposals may be submitted on emerging issues that are not included in the identified priorities. However, any such proposal must demonstrate relevance to the Plan and must make a persuasive argument that the issue is particularly critical.

Eligibility: States and accredited schools of medicine are eligible applicants.
Funding Priorities or Preferences: None.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount of This Competition: $1,200,000.
Estimated Number of Awards: 8.
Estimated or Average Size of Each Award: See the application guidance materials.
Estimated Project Period: 2–3 years.
CFDA Number: 93.127D.
Application Availability Date: September 1, 2000.
Letter of Intent Deadline: October 2, 2000.
Application Deadline: November 1, 2000.
Projected Award Date: March 1, 2001.
Program Contact Person: Cindy Doyle.
Phone Number: 301 443–3888.
E-Mail: cdoyle@hrsa.gov.

Pediatric Injury Surveillance System 93.127J

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.
Purpose: To develop an infrastructure for the purpose of collecting and analyzing information on pediatric injuries to develop effective prevention and treatment strategies. Data collection sites included in the sampling frame will be dispersed throughout the U.S., providing a mechanism to generate national estimates of childhood injury. Data elements contained within the database will be map-able to elements in other national injury registries, allowing large databases to be easily consolidated. A subset of the surveillance data points will include both prehospital and short-term functional status data collected at hospital discharge. Data will be linked to vital statistics records, extending the data collection window and facilitating research questions associated with the continuum of care among injured children.
Eligibility: States and accredited schools of medicine.
Funding Priorities or Preferences: None.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount of This Competition: $500,000.
Estimated Number of Awards: 1.
Estimated Project Period: 3 years.
CFDA Number: 93.127J.
Application Availability Date: February 1, 2001.
Letter of Intent Deadline: March 1, 2001.
Application Deadline: April 2, 2001.
Projected Award Date: July 1, 2001.
Program Contact Person: Cindy Doyle.
Phone Number: 301 443–3888.
E-Mail: Cdoyle@hrsa.gov

Clinical Practice Guidelines for Emergency Care of Children 93.127i

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.
Purpose: To develop a set of clinical practice guidelines applicable to all medical personnel who are responsible for treating children's emergency conditions (*e.g.,* pediatricians, family practitioners, nurse practitioners, emergency department physicians, physician associates). The purpose of these guidelines will be to improve care for common problems that children present in emergency departments and doctors' offices. These guidelines will be based on an assessment of published research and will permit accumulating valid summary statistics.
Eligibility: States and accredited schools of medicine are eligible applicants.
Funding Priorities and/or Preferences: None.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount of This Competition: $500,000.
Estimated Number of Awards: 1.
Estimated Project Period: 3 years.
CFDA Number: 93.127i.
Application Availability Date: April 2, 2001.
Letter of Intent Deadline: May 1, 2001.
Application Deadline: June 1, 2001.
Projected Award Date: September 1, 2001.
Program Contact Person: Cindy Doyle.
Phone Number: 301 443–3888.
E-Mail: cdoyle@hrsa.gov

A Color-Coded System for Equipment and Medication for Pediatric Resuscitation 93.127H

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.
Purpose: To demonstrate the effectiveness of a color-coded system, which allows access to accurate precalculated medication doses and equipment sizes, and emergency treatments for critically ill and injured children. The effectiveness of implementing a color-coding system in the clinical setting will be appropriately evaluated using scientifically based data collection and analysis techniques.
Eligibility: Accredited Schools of Medicine and States.
Funding Priorities or Preferences: None.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount of This Competition: $250,000.
Estimated Number of Awards: 1.
Estimated Project Period: 3 years.
CFDA Number: 93.127H.
Application Availability Date: January 2, 2001.
Letter of Intent Deadline: February 1, 2001.
Application Deadline: March 1, 2001.
Projected Award Date: June 1, 2001.
Program Contact Person: Cindy Doyle.
Phone Number: 301–443–3888.
E-Mail: Cdoyle@hrsa.gov

Traumatic Brain Injury (TBI)—State Implementation Grants 93.234A

Legislative Authority: Public Health Service Act, Title XII, Section 1242, 42 U.S.C. 300d–42.
Purpose: The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Implementation grants provide funding to assist States in moving toward statewide systems that assure access to comprehensive and coordinated TBI services.
Eligibility: State governments.
Funding Priorities or Preferences: None.
Matching Requirement: The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount of This Competition: $1,000,000.
Estimated Number of Awards: 5.
Estimated or Average Size of Each Award: See the application guidance materials.
Estimated Project Period: 3 years.
CFDA Number: 93.234A.
Application Availability Date: September 1, 2000.
Letter of Intent Deadline: November 1, 2000.
Application Deadline: December 1, 2000.
Projected Award Date: April 1, 2001.
Program Contact Person: Betty Hastings, MSW.
Phone Number: 301 443–5599.
E-Mail: bhastings@hrsa.gov

Traumatic Brain Injury (TBI)—State Planning Grants 93.234B

Legislative Authority: Public Health Service Act, Title XII, Section 1242, 42 U.S.C. 300d–42.
Purpose: The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI).

Implementation grants provide funding to assist States in moving toward statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility: State governments.

Funding Priorities or Preferences: None.

Matching Requirement: The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of this Competition: $375,000.

Estimated Number of Awards: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number: 93.234B.

Application Availability Date: September 1, 2000.

Letter of Intent Deadline: November 1, 2000.

Application Deadline: December 1, 2000.

Projected Award Date: April 1, 2001.

Program Contact Person: Betty Hastings, MSW.

Phone Number: 301 443–5599.

E-Mail: bhastings@hrsa.gov

State Mortality Review Support Program 93.926C

Legislative Authority: Section 301, Public Health Service Act, 42 U.S.C. 241.

Purpose: The purpose of this program is to enable State Maternal and Child Health programs to stimulate, promote, coordinate, and sustain mortality and morbidity review programs at state and local levels. The findings and recommendations from these review programs are used to build MCH capacity by enhancing needs assessment, policy development, and quality improvement efforts. The intent of this program is two-fold: (1) use local findings at State MCH level for capacity building, and (2) improve coordination between two or more types of review processes that co-exist in the State. In particular, these programs will assist states in improving the health of mothers and children through MCH programming and infrastructure building. Fetal and Infant Mortality Review (FIMR), maternal mortality review, and child fatality review are priorities for the focus of this program.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply. There may be only one application per state (details will be given in the application guidance).

Funding Priorities and/or Preferences: State/Territorial MCH Title V agencies, tribal health agencies or their designees, or state/territorial programs that have not previously been awarded a state Mortality/Morbidity Review Support Program grant and where at least two or more review processes co-exist and multiple review committees exist for a given process within the State.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $600,000.

Estimated Number of Awards To Be Made: 4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.926C.

Application Availability Date: November 20, 2000.

Letter of Intent Deadline: December 18, 2000.

Application Deadline: January 29, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Brenda Lisi.

Phone Number: 301 443–9991.

E-Mail: Blisi@hrsa.gov

The Perinatal Systems and Women's Health National Resource Center 93.926D

Legislative Authority: Section 301 of the Public Health Service Act, 42 U.S.C. 241.

Purpose: The Division of Perinatal Systems and Women's Health provides national leadership in coordinating and disseminating resources developed through innovative national programs that focus on perinatal and women's health. These resources contribute to reduction in disparities in perinatal health and improvement of the quality and comprehensiveness of systems of perinatal and women's health care. The National Resource Center will serve communities and community-based organizations; professional, academic, and provider organizations; and the general public. The resource center will focus on the following functions: library and resource development, dissemination, communication and continuing education.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Priorities and/or Preferences: N/A.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $800,000.

Estimated Number of Awards To Be Made: 1.

Estimated Project Period: 2 years.

CFDA Number: 93.926D.

Application Availability Date: December 21, 2000.

Letter of Intent Deadline: January 29, 2001.

Application Deadline: February 23, 2001.

Projected Award Date: July 1, 2001.

Program Contact Person: Beverly Wright.

Phone Number: 301–443–8427.

E-Mail: bwright@hrsa.gov

Healthy Start Initiative—Eliminating Disparities in Perinatal Health 93.926E

Legislative Authority: Section 301, Public Health Service Act, 42 U.S.C. 241.

Purpose: The purpose of this program is to address significant disparities in perinatal health indicators including disparities among Hispanics, American Indians, African Americans, Alaska Natives, Asian/Pacific Islanders, immigrant populations, or differences occurring by education, income, disability, or living in rural/isolated areas by enhancing a community's service system. To address these indicators, it is anticipated that the proposed scope of project services will cover preconceptional, pregnancy, and interconceptional phases for women and infants residing in the proposed project area. To promote longer interconceptional periods and prevent relapses of unhealthy risk behaviors, services are to be given to both mother and infant through the infant's second year of life. Funding would be made available to community-based projects which have: (1) significant disparities in perinatal indicators which contribute to high infant mortality rates, among one or more subpopulations; (2) an existing active consortia of stakeholders which have underway a perinatal disparity reduction initiative for at least one year; and, (3) a feasible plan to reduce barriers, improve the local perinatal system of care, and work towards eliminating existing disparities in perinatal health. These sites must have or plan to implement/adapt Healthy Start strategies of consortium, case management, and outreach services in a culturally and linguistically sensitive manner. In addition, they must demonstrate existing/planned collaborations with key State and local services and resource systems. Such key State and local resources include Title V, Title X, Title XIX, Title XXI, WIC, Enterprise Communities/ Empowerment Zones, federally funded Community and Migrant Health Centers, federally funded Health Care for the Homeless

projects, and Indian/Tribal Health Services.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Preferences/Priorities: Communities in States and Territories which will not have a federally-funded Healthy Start project after July 1, 2001 (details will be given in the application guidance).

Special Considerations: National geographic distribution as well as urban/rural.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of this Competition: Up to $59,840,000.

Estimated Number of Awards To Be Made: Up to 59.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.926E.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: January 5, 2001.

Application Deadline: February 6, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Maribeth Badura.

Phone Number: 301–443–8283.

E-Mail: mbadura@hrsa.gov

Interconception Care for High-Risk Women and Their Infants 93.926K

Legislative Authority: Section 301, Public Health Service Act.

Purpose: The purpose of this program is to improve the health of high-risk women and their infants and to avoid future adverse pregnancy outcomes. This initiative will support communities to enroll high-risk women at the time of delivery in the hospital and follow these high-risk women and their infants for two years or through the next pregnancy, ensuring they are enrolled in the health care system for appropriate care and follow-up. Proposals must target postpartum women who delivered a live infant or who sustained a fetal loss without receipt of prenatal care. Funded programs must demonstrate a significant need in their population and may be statewide or focused on a smaller geographic area. Required project activities include early identification of these high-risk women and increasing the sustained participation of these women and infants in existing health and related services beyond the postpartum period. All proposed activities must be provided in a culturally and linguistically sensitive manner.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Priorities and/or Preferences: None.

Special Considerations: National geographic distribution.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $7,000,000.

Estimated Number of Awards To Be Made: Up to 25.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.926K.

Application Availability Date: December 8, 2000.

Letter of Intent Deadline: January 12, 2001.

Application Deadline: February 16, 2001.

Projected Award Date: July 1, 2001.

Program Contact Person: Brenda Lisi.

Phone Number: 301–443–9991.

E-Mail: blisi@hrsa.gov

Improving Women's Health Through Screening and Intervention for Depression During or Around the Time of Pregnancy 93.926L

Legislative Authority: Section 301, Public Health Service Act.

Purpose: The purpose of this program is to promote systems of care that address gaps in routine screening and skilled assessment for depression during or around the time of pregnancy and to enhance linkages to community-based intervention services for depression that are age and culturally specific for women of reproductive age. Proposals must target pregnant and postpartum women but may also target women contemplating pregnancy (*e.g.,* pre-conceptional). Funded programs may be statewide or target a geographic area within a particular state. Activities considered for funding include but are not limited to statewide or community needs assessment, system planning and program implementation based on needs assessment findings and other data (e.g. evidence-based), outreach, provider training, consumer education, program evaluation and an infrastructure building network of community prenatal and family planning providers and mental health service providers that will lead to early identification and increased capacity to effectively screen, perform skilled assessment and successfully engage pregnant, postpartum and pre-conceptional women who are experiencing depression and other disorders in appropriate mental health services. The result of these activities will be improved health outcomes for women and their families.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Priorities and/or Preferences: State/Territorial Title V agencies, tribal health agencies or their designees (details will be given in the application guidance). Only one application will be accepted per State/Territory.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $2,000,000.

Estimated Number of Awards To Be Made: Up to 10.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.926L.

Application Availability Date: October 18, 2000.

Letter of Intent Deadline: November 17, 2000.

Application Deadline: December 21, 2000.

Projected Award Date: April 1, 2001.

Program Contact Person: Karen Hench.

Phone Number: 301–443–9708.

E-Mail: khench@hrsa.gov

Healthy Start Initiative—State Infrastructure Initiatives 93.926M

Legislative Authority: Section 301, Public Health Service Act.

Purpose: This grant is intended to facilitate State infrastructure/capacity development to address and support local communities funded under federal Healthy Start, disparities in perinatal health, including disparities among Hispanics, American Indians, African Americans, Alaska Natives, Asian/Pacific Islanders, immigrant populations, or differences occurring by education, income, disability or living in rural/isolated areas. Activities may include: technical assistance to communities in particular those communities with Healthy Start programs; integration of existing State service systems to support comprehensive perinatal and women's health systems in communities; consortium/council development; dissemination of best practices developed nationally and within the state; professional and paraprofessional development; increased data capacity; and enhanced capacity for community-based planning.

Eligibility: Any public or private entity, including an Indian Tribe or Tribal Organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Priorities or Preferences: State/Territorial MCH Title V agencies, tribal health agencies or their designees (details will be given in the application guidance).

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $7,500,000.

Estimated Number of Awards To Be Made: 59.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.926M.

Application Availability Date: October 6, 2000.

Letter of Intent Deadline: November 9, 2000.

Application Deadline: December 8, 2000.

Projected Award Date: May 1, 2001.

Program Contact Person: Angela Hayes-Toliver.

Phone Number: (301) 443–5136.

E-Mail Address: ahayes@hrsa.gov

Healthy Start Initiative (HSI)—Eliminating Disparities in Perinatal Health—Border Health 93.926N

Legislative Authority: Section 301, Public Health Service Act.

Purpose: To enhance a border community's perinatal service system to address significant disparities and deficiencies in perinatal health which contribute to infant mortality. To address these indicators, it is anticipated that the proposed scope of project services will cover preconceptional, pregnancy, and interconceptional phases for women and infants residing in the proposed project area. Services are to be given to both mother and infant through the infant's second year of life to promote longer interconceptional periods and lower recidivism/prevent relapses of unhealthy risk behaviors. The selected communities must be within 62 miles of the US-Mexican border, have high incidence of poor perinatal indicators, have an active consortia of stakeholders and consumers, and plan to implement or adapt Healthy Start methods of intervention in a culturally and linguistically sensitive manner.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) that directly serves the target population in the communities within 62 miles of the US-Mexican border and who meet the established HSI Border Health criteria is eligible to apply.

Funding Priorities or Preferences: Communities meeting the established HSI Border Health criteria in States which will not have a federally-funded Healthy Start border project after July 1, 2001 (details will be given in the application guidance).

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $1,000,000.

Estimated Number of Awards to be Made: Up to 2 projects.

Estimated Project Period: 4 years.

CFDA Number: 93.926N.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: January 5, 2001.

Application Deadline: February 6, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Donna Hutten.

Phone Number: 301–443–8427.

E-Mail Address: dhutten@hrsa.gov

Office of the Administrator

Community Access Program 93.252

Legislative Authority: PHS Act, Section 301 [A legislative proposal for program-specific authority has been submitted to Congress by the Administration. If program authority is not enacted this year, the program would continue to operate under the demonstration authority in Section 301.]

Purpose: To assist communities and consortia of health care providers to develop the infrastructure necessary to fully develop or strengthen integrated health systems of care that coordinate health services for the uninsured.

Eligibility: Applications may be submitted by public or non-profit entities who demonstrate a commitment to and experience with providing a continuum of care to uninsured individuals. Each applicant must represent a community-wide coalition that includes local health care providers who have traditionally provided care to the community's uninsured and underinsured regardless of ability to pay. The consortium may include private sector health care providers and organizations.

Funding Priorities and/or Preference: None.

Estimated Amount of This Competition: $100 million.

Estimated Number of Awards To Be Made: 100 new awards.

Estimated Project Period: 1 year.

CFDA Number: 93.252.

Application Availability Date: December 1, 2000 (Approximate).

Letter of Intent Deadline: January 15, 2001 (Approximate).

Application Deadline: June 1 (Approximate).

Projected Award Date: September 1 (Approximate).

Program Contact Person: Julia Tillman.

Phone Number: 301–443–0536.

E-Mail Address: jtillman@hrsa.gov

Association of State and Territorial Health Officials (ASTHO) 93.000

Legislative Authority: Section 301 of the Public Health Service Act [42 U.S.C. 241], as amended.

Purpose: The purpose of this project is to address the health care needs of the underserved and vulnerable populations, the needs of health care providers who serve vulnerable populations, and related public health issues. The cooperative agreement will support HRSA's mission by assisting the Association of State and Territorial Health Officials (ASTHO) in developing and convening State and territorial policy forums and provide educational and resource materials emanating from these forums for State and territorial policymakers on the above areas.

Eligibility: Assistance will be provided only to the ASTHO. No other applications are solicited. There is no ongoing group that can convene the high-ranking decision-makers representing State and Territorial health officials' interests around an issue of importance to HRSA. This group will facilitate communication on current and emerging strategies addressing common priorities, and will enable HRSA to better leverage limited resources by improving planning and program design to complement other public and private sector initiatives serving the needs of the same populations.

Funding Priorities or Preferences: None.

Estimated Amount of This Competition: $100,000.

Estimated Number of Awards To Be Made: 1.

Estimated Project Period: In anticipation of Fiscal Year (FY) 2001 funding, HRSA announces its intention to award a cooperative agreement which will begin on or after October 1, 2000, and will be for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

CFDA Number: 93.000.

Application Availability Date: (To be determined).

Application Deadline: (To be determined).

Projected Award Date: On or after October 1, 2000.

Program Contact Person: Diane Rodill, Ph.D.

Phone Number: 301 443–4034.

E-Mail: drodill@hrsa.gov

National Association of County and City Health Officials (NACCHO) 93.000

Legislative Authority: Section 301 of the Public Health Service Act (2 U.S.C. 241), as amended.

Purpose: The purpose of this project is to address the health care needs of the underserved and vulnerable populations, the needs of health care providers who serve vulnerable populations, and related public health issues; and support HRSA's mission by assisting NACCHO in developing and convening county and city policy forums and provide educational and resource materials emanating from these forums for county and city policymakers on the above areas.

Eligibility: Assistance will be provided only to the National Association of County and City Health Officials. No other applications are solicited. There is no other ongoing group that can convene the high-ranking decision-makers representing county and city health officials' interests around an issue of importance to HRSA. This group will facilitate communication on current and emerging strategies addressing common priorities, and will enable HRSA to better leverage limited resources by improving planning and program design to complement other public and private sector initiatives serving the needs of the same populations.

Funding Priorities and/or Preferences: N/A.

Estimated Amount of This Competition: $100,000.

Estimated Number of Awards to Be Made: 1.

Estimated Project Period: In anticipation of Fiscal Year (FY) 2001 funding, HRSA announces its intention to award a cooperative agreement which will begin on or after October 1, 2000, and will be for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

CFDA Number: 93.000.

Application Availability Date: (To be determined).

Letter of Intent Deadline: N/A.

Application Deadline: May 30, 2000.

Projected Award Date: On or after October 1, 2000.

Program Contact Person: Diane Rodill, Ph.D.

Phone Number: 301 443–4034.

E-Mail: drodill@hrsa.gov

National Conference of State Legislatures (NCSL) 93.000

Legislative Authority: Section 301 of the Public Health Service Act [42 U.S.C. 241], as amended.

Purpose: The purpose of this project is to address the health care needs of the underserved and vulnerable populations, the needs of health care providers who serve vulnerable populations, and related public health issues. The cooperative agreement with NCSL will support HRSA's mission in developing and convening State Legislative policy forums and provide educational and resource materials emanating from these forums for State Legislature policymakers on the above areas.

Eligibility: Assistance will be provided only to the National Conference of State Legislatures. No other applications are solicited. There is no ongoing group that can convene the high-ranking decision-makers representing State Legislatures' interests around an issue of importance to HRSA. This group will facilitate communication on current and emerging strategies addressing common priorities, and will enable HRSA to better leverage limited resources by improving planning and program design to complement other public and private sector initiatives serving the needs of the same populations.

Funding Priorities and/or Preference: NA.

Estimated Amount of This Competition: $100,000.

Estimated Number of Awards to Be Made: 1.

Estimated Project Period: In anticipation of Fiscal Year (FY) 2001 funding, HRSA announces its intention to award a cooperative agreement which will begin on or after October 1, 2000, and will be for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

CFDA Number: 93.000.

Application Availability Date: (To be determined).

Letter of Intent Deadline: N/A.

Application Deadline: (To be determined).

Projected Award Date: On or after October 1, 2000.

Program Contact Person: Diane Rodill, Ph.D.

Phone Number: 301 443–4034.

E-Mail: drodill@hrsa.gov

Public Health Foundation (PHF) 93.000

Legislative Authority: Section 301 of the Public Health Service Act [42 U.S.C. 241], as amended.

Purpose: The purpose of this project is to support HRSA's mission by assisting the Public Health Foundation (PHF) in clearinghouse and infrastructure activities, including but not limited to: Expanding and maintaining a workforce development clearinghouse for use by health agencies and other community health system organizations on issues that relate to health care access for underserved and vulnerable populations, to include the prevention, early detection, and control of disease, and strengthening the public health infrastructure in the health agencies and other community health system organizations; developing, printing, and distributing articles, reports, tools, or other documents relating to health care access, unmet population needs, provider capacity, the uses of existing data systems to address health care needs, other infrastructure issues, and private sector population-based initiatives.

Eligibility: Assistance will be provided only to the PHF. No other applications are solicited. PHF is the only national, non-profit, and non-membership organization that serves as a public health ''think tank'' around public health infrastructure issues, and is also dedicated to supporting and advancing efforts of local, state, and Federal public health agencies and health systems to promote and protect the health of people within their respective jurisdictions.

Funding Priorities and/or Preference: NA.

Estimated Amount of This Competition: $50,000.

Estimated Number of Awards to Be Made: 1.

Estimated Project Period: In anticipation of Fiscal Year (FY) 2001 funding, HRSA announces its intention to award a cooperative agreement which will begin on or after October 1, 2000, and will be for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

CFDA Number: 93.000.

Application Availability Date: (To be determined).

Letter of Intent Deadline: N/A.

Application Deadline: (To be determined).

Projected Award Date: On or after October 1, 2000.

Program Contact Person: Diane Rodill, Ph.D.

Phone Number: 301 443–4034.

E-Mail: drodill@hrsa.gov

Pacific Islands Health Officers Association 93.000

Legislative Authority: Sections 301, 330(A), 330(k), 761(b), 767 of the Public Health Service Act, as amended, and Sections 509 and 711 of the Social Security Act, as amended.

Purpose: This is a grant program for the Research Corporation of the University of Hawaii Special Projects program to support the Pacific Islands Health Officers Association (PIHOA), which serves as a regional health policy body for the six Pacific Basin jurisdictions. PIHOA was established in 1986 as a formal mechanism to discuss common health interests, problems and concerns, and to promote and enhance a regional approach for cost-effective sharing of resources, information, and human expertise to advance health care improvements in the Pacific Basin. The U.S. Public Health Service (PHS) has used PIHOA to coordinate PHS agencies' programs and the provision of technical assistance to the Pacific Basin.

Matching or Cost Sharing Requirement: None.

Eligibility: Assistance will be provided only to PIHOA through the Research Corporation of the University of Hawaii Special Projects program, which serves as the Executive Directorate for PIHOA. No other applications are solicited.

PIHOA is the only Pacific Basin health policy organization that represents the six jurisdictions, which include, the U.S. flag territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, and the three U.S.-associated jurisdictions of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. It is the only regional conduit for the governments to communicate with each other to share ideas and resources.

Funding Priorities and/or Preferences: None.

Special Considerations: None.

Estimated Amount of This Competition: $100,000.

Estimated Number of Awards To Be Made: 1.

Estimated or Average Size of Each Award: $100,000.

Estimated Project Period: 3 years.

CFDA Number: 93.000.

Application Availability Date: June 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: June 1, 2000.

Projected Award Date: October 1, 2000.

Program Contact Person: Lynnette S. Araki.

Phone Number: 301 443–6204.

E-Mail: LAraki@hrsa.gov

Office of Rural Health Policy

State Rural Hospital Flexibility Program 93.241

Legislative Authority: Section 1820 of the Social Security Act (42 U.S.C. 1395I–4) as amended in Public Law 105–33 sec. 4201.

Purpose: The purpose of this grant program is to help states work with rural communities and hospitals to develop and implement a rural health plan, develop integrated networks of care, improve emergency medical services, designate critical access hospitals and improve quality.

Matching or Cost Sharing Requirement: None.

Eligibility: 50 States.

Funding Priorities and/or Preferences: Most programs have none—enter only approved priorities or preferences that will be applied beyond the review criteria.

Special Considerations: These are grants to States and only one application will be accepted from each eligible state.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards To Be Made: 3.

Estimated or Average Size of Each Award: $470,000.

Estimated Project Period: 2 Years.

CFDA Number: 93.241.

Application Availability Date: February 1, 2001.

Letter of Intent Deadline: N/A.

Application Deadline: May 25, 2001.

Projected Award Date: August 31, 2001.

Program Contact Person: Forrest Calico.

Phone Number: 301 443–0835.

E-Mail: fcalico@hrsa.gov

Rural Health Network Development 93.912B

Legislative Authority: Section 330a of the Public Health Service Act, 42 U.S.C. 254c.

Purpose: The purpose of this program is to support the planning and development of integrated health care networks in rural areas. Networks must be composed of three different types of providers. The emphasis of the program is on projects to develop the organizational capabilities of these networks. The network is a tool for overcoming the fragmentation of health care delivery services in rural areas. As such, the network provides a range of possibilities for structuring local delivery systems to meet health care needs of rural communities.

Matching or Cost Sharing Requirement: None.

Eligibility: Rural public or nonprofit private organization that is or represents a network which includes three or more health care providers or other entities that provide or support the delivery of health care services. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or an organization constituted exclusively to provide services to migrant and seasonal farm workers in rural areas and supported under Section 330(g) of the Public Health Service Act. The last type of organization is eligible regardless of the urban or rural location of the administrative headquarters.

Funding Priorities or Preferences: Funding preference may be given to applicant networks that include: (1) a majority of the health care providers serving in the area or region to be served by the network; (2) any federally qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program (WIC), to improve access to and coordination of health care services.

Special Considerations: Applicant Organization's Central Headquarters Must Be Located in a Rural Area. (List of Eligible Rural Areas is Included in Application Packet.)

Estimated Amount of This Competition: $1,908,000.

Estimated Number of Awards To Be Made: 12.

Estimated or Average Size of Each Award: $159,000.

Estimated Project Period: 3 years.

CFDA Number: 93.912B.

Application Availability Date: July 17, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: October 23, 2000.

Projected Award Date: May 01, 2001.

Program Contact Person: Lilly Smetana.

Phone Number: 301 443–0835.

E-Mail: lsmetana@hrsa.gov

Rural Health Outreach Grant 93.912A

Legislative Authority: Section 330a of the Public Health Service Act, 42 U.S.C. 254c.

Purpose: The purpose of this grant program is to expand access to, improve coordination of, restrain the cost of, and improve the quality of essential health care services, including preventive and

emergency services, through the development of integrated health care delivery systems or networks in rural areas and regions. Funds are available for projects to support the direct delivery of health care and related services, to expand existing services, or to enhance health service delivery through education, promotion, and prevention programs. The emphasis is on the actual delivery of specific services rather than the development of organizational capabilities. Projects may be carried out by networks of the same providers (e.g. all hospitals) or more diversified networks.

Matching or Cost Sharing Requirement: None.

Eligibility: Rural public or nonprofit private organization that is part of a network of at least three entities that provide or support the delivery of health care services and will work together to complete the proposed project. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or an organization constituted exclusively to provide services to migrant and seasonal farm workers in rural areas and supported under Section 330(g) of the Public Health Service Act. This last type of organization is eligible regardless of the urban or rural location of the administrative headquarters.

Funding Priorities or Preferences: Funding preference may be given to applicant networks that include: (1) a majority of the health care providers serving in the area or region to be served by the network; (2) any federally qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program (WIC), to improve access to and coordination of health care services.

Special Considerations: Applicant Organization's Central Headquarters Must Be Located in a Rural Area. (List of Eligible Rural Areas is Included in Application Packet.).

Estimated Amount of This Competition: $5,642,000.

Estimated Number of Awards To Be Made: 31.

Estimated or Average Size of Each Award: $182,000.

Estimated Project Period: 3 years.

CFDA Number: 93.912A.

Application Availability Date: July 17, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: 10/16/00.

Projected Award Date: 05/01/01.

Program Contact Person: Lilly Smetana.

Phone Number: 301 443–0835.

E-Mail: lsmetana@hrsa.gov.

Rural Health Roundtable 93.223

Legislative Authority: Section 301 of the Public Health Service Act.

Purpose: A single award will be made to George Mason University, Center for Health Policy, to support the Rural Health Roundtable. The purpose of this cooperative agreement is to increase awareness of rural health issues among the many associations and organizational health interest groups in the Washington, D.C. area through a series of educational forums. Funds are available to stage four educational forums a year that focus on specific rural health issues such as recruitment and retention of health care providers in rural areas, the impact of Medicare payment policy on rural health care providers and various other policy and program issues that affect the rural health care delivery system. Funds can also be used to provide background papers and supporting documents for the individual educational forums. These materials can also be disseminated through the World Wide Web and Rural Health Roundtable Listserve.

Matching or Cost Sharing Requirement: None.

Eligibility: A single award will be made to George Mason University's Center for Health Policy. The Center for Health Policy at George Mason University is the only local entity that focuses exclusively on rural health issues. The Center has a proven record of providing educational forums on rural issues. Both its administration and staff are experts in the rural health field and uniquely positioned to provide a focal point of educational programming on rural health issues to the many health associations and organizations that are located in the Washington D.C. area.

Funding Priorities or Preferences: None.

Special Considerations: N/A.

Estimated Amount of This Competition: $280,000.

Estimated Number of Awards To Be Made: 1.

Estimated or Average Size of Each Award: $280,000.

Estimated Project Period: 4 years.

CFDA Number: 93.223.

Application Availability Date: June 30, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: July 31, 2000.

Projected Award Date: September 15, 2000.

Program Contact Person: Tom Morris.

Phone Number: 301 443–0835.

E-Mail: tmorris@hrsa.gov.

Office of Special Programs

Extramural Support Program for Projects To Increase Organ and Tissue Donations 93.134

Legislative Authority: Section 371 (a)(3) of the Public Health Service (PHS) Act, 42 U.S.C. 273(a)(3), as amended.

Purpose: Funds for this program will provide financial assistance to Federally designated OPOs and other private non-profit entities to increase organ and tissue donation. The program's goal is to assist eligible entities in the evaluation, or implementation and evaluation, of promising strategies that can serve as model interventions for increasing donation. Development of interventions also may be supported but shall not exceed 20 percent of project funding and staff time. For purposes of this program, models are defined as interventions which are: (1) effective in producing a verifiable and demonstrable impact on donation; (2) replicable; (3) transferable; and (4) feasible in practice. All projects must have rigorous methodology and evaluation components capable of ascertaining the effectiveness of the intervention(s). Projects can employ qualitative and/or quantitative research. Applications may describe single-site pilot projects or replications of interventions shown to be effective in pilot studies.

Eligibility: Federally designated organ procurement organizations (OPOs), private non-profit organizations.

Funding Priorities and/or Preferences: None.

Estimated Amount of this Competition: $5,000,000.00.

Estimated Number of Awards To Be Made: 20–25.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1–3 years.

CFDA Number: 93.134.

Application Availability Date: March 15, 2001.

Letter of Intent Deadline: April 2, 2001.

Application deadline: May 1, 2001.

Projected Award Date: August 31, 2001.

Program Contact Person: Dr. Mary Ganikos.

Phone Number: 301 443–7577.

E-mail: mganikos@hrsa.gov.

Other Programs

Outpatient Hansen's Disease Medical Services 93.215

Legislative Authority: Public Health Service Act, Title III, Section 320.

Purpose: The Outpatient Hansen's Disease Medical Services program is designed to prevent disability through early diagnosis and treatment of Hansen's Disease. The program supports research into Hansen's Disease and outpatient health care services. Service delivery locations are in areas of the United States and Puerto Rico where there are concentrations of persons with Hansen's Disease to assure access by persons needing services. It is the intent of HRSA to continue to support health services in priority areas. Currently and historically, services have been offered in Arizona, California, Florida, Illinois, Massachusetts, New York, Puerto Rico, Texas and the State of Washington.

Matching or Cost Sharing Requirement: N/A.

Eligibility: Public or private nonprofit entities which currently are not receiving funding directly from Congress for Hansen's Disease services are eligible to apply.

Funding Priorities or Preferences: Applicants who utilize facility and community resources for the indigent and uninsured patients with Hansen's Disease in their area will be given preference.

Special Considerations: Communication with the Ambulatory Care Program at the National Hansen's Disease Program is essential in deciding whether to pursue funding as a grantee under this program. Information about specific geographic areas can be obtained from this office.

Estimated Amount of This Competition: Up to $2 million.

Estimated Number of Awards to Be Made: Approximately 10–12.

Estimated or Average Size of Each Award: Applicants with 100 or more patients will be eligible for grants ranging from $100,000 to $400,000. Applicants with 50 to 100 patients will be eligible for grants from $25,000 to $100,000.

Estimated Project Period: 1–5 Years.

CFDA Number: 93.215.

Application Availability Date: 6/15/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 9/1/2000.

Projected Award Date: 1/1/01.

Program Contact Person: Irma E. Guerra.

Phone Number: 1–800–642–2477.

Lawton Chiles Foundation 93.000

Legislative Authority: Publ. L. 106–113.

Purpose: A single award will be made to the Lawton Chiles Foundation in Tallahassee, Florida to stimulate and facilitate communities' capacity to develop comprehensive care for children and families. In 1999, the Health Resources and Services Administration was directed by the U.S. Congress in Public Law 106–113 to make funds available to the Foundation.

Matching or Cost Sharing Requirement: None.

Eligibility: A single award will be made to the Lawton Chiles Foundation of Tallahassee, Florida in accordance with the provisions of Public Law 106–113.

Funding Priorities or Preferences: None.

Special Considerations: N/A.

Estimated Amount of This Competition: $1,840,000.

Estimated Number of Awards To Be Made: 1.

Estimated Project Period: 28 Months.

CFDA Number: 93.000.

Application Availability Date: N/A.

Letter of Intent Deadline: N/A.

Application Deadline: N/A.

Projected Award Date: July 2000.

Program Contact Person: Marylin Stone.

Phone Number: 301 443–1433.

E-Mail: mstone@hrsa.gov.

Special Projects for Schools of Public Health (Cooperative Agreement With The Association of Schools of Public Health) 93.XXX

In Fiscal Year 2001, schools of public health may submit letters of intent to apply for HRSA funding to support special projects to address: health disparities in the U.S. population; assuring access to quality health care; and educating the next generation of public health leaders. A current cooperative agreement between HRSA's Bureau of Health Professions and the Association of Schools of Public Health (ASPH) will assist in matching HRSA interests and the expertise at schools of public health. There is no guarantee that funding will become available to support any projects, and whether projects are funded is at HRSA's discretion. The ASPH will provide additional information to the schools of public health about HRSA and its priorities, and ASPH will receive all letters of intent relative to this initiative. For further information, contact Barry S. Stern at (301) 443–6758 or bstern@hrsa.gov.

HRSA has Exhibits at the Following Meetings/Conferences in 2000

American Academy of Physician Assistants' (AAPA), 28th Annual Physician Assistants Conference, May 27–June 1, Chicago, IL, HRSA POC: Jan Aamodt (301) 443–0205

Association of Women's Health, Obstetric & Neonatal Nurses, June 4–7, Seattle, WA, HRSA POC: Jan Aamodt (301) 443–0205

17th Annual Meeting of the Association for Health Services Research (AHSR), June 25–27, Westin Bonaventure Hotel, Los Angeles, CA, HRSA POC: Steve Merrill (301) 443–3376

2000 National Council of La Raza (NCLR) Conference, July 1–5, San Diego Convention Center, San Diego, CA, HRSA POC: Iveliesse de Ororbia (301) 443–3228

National Conference of State Legislatures (NCSL) 26th Annual Meeting, July 16–20, Navy Pier, Chicago, IL, HRSA POC: Steve Merrill (301) 443–3376

Combined National Association of County and City Health Officials (NACCHO) and Association of State and Territorial Health Officials (ASTHO) Annual Meeting, July 19–22, Regal Biltmore Hotel, Los Angeles, CA, HRSA POC: Steve Merrill (301) 443–3376

8th Annual National Association of Local Boards of Health (NALBOH) Conference, July 26–29, Sheraton Capitol Center, Raleigh/Durham, NC, HRSA POC: Steve Merrill (301) 443–3376

Annual Distance Learning Conference, August 6–10, New Orleans, LA, HRSA POC: Steve Merrill (301) 443–3376

National Latina Institute for Reproductive Health National Conference, September 28–October 2, Washington, DC, HRSA POC: Iveliesse de Ororbia (301) 443–3228

American Academy of Pediatrics (AAP) Annual Meeting, October 28–November 1, Chicago Hilton & Towers/Lakeside Center, Chicago, IL, HRSA POC: Jan Aamodt (301) 443–0205

Hispanic National Association of Colleges and Universities National Conference, November 4–7, Albuquerque, NM, HRSA POC: Iveliesse de Ororbia (301) 443–3228

Association of Military Surgeons of the United States (AMSUS) 107th Annual Meeting, November 5–10, Las Vegas Convention Center, Las Vegas, NV, HRSA POC: Steve Merrill (301) 443–3376

128th Annual American Public Health Association (APHA) Meeting, November 12–16, Hynes Convention Center, Boston, MA, HRSA POC: Steve Merrill (301) 443–3376

National Health Service Corps Exhibit Schedule

National Rural Health Association, May 25–27, New Orleans, LA, NHSC POC: Gretchen Jones (301) 594–4158

American Academy of Physician Assistants, May 27–June 1, Chicago, IL, NHSC POC: Gretchen Jones (301) 594–4158

National Conference of State Legislatures (NCSL) 26th Annual Meeting, July 16–20, HRSA Booth #1430, Navy Pier, Chicago, IL, NHSC POC: Gretchen Jones (301) 594–4158

Bureau of Primary Health Care Annual Primary Care Symposium, July 18–20, Hyatt Bethesda Hotel, Bethesda, MD, NHSC POC: Gretchen Jones (301) 594–4158

Combined National Association of County and City Health Officials (NACCHO) and Association of State and Territorial Health Officials (ASTHO) Annual Meeting, July 19–22, HRSA Booth #308, Regal Biltmore Hotel, Los Angeles, CA, NHSC POC: Gretchen Jones (301) 594–4158

AAFP National Congress of Family Practice Residents, August 2–6, Kansas City, MO, NHSC POC: Gretchen Jones (301) 594–4158

HRSA Supports Healthy People 2010

The Health Resources and Services Administration is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a national program to reduce morbidity and mortality and improve the quality of life of the American people. The programs included in this document are supportive of many of the Healthy People 2010 areas of emphasis. Grantees and potential grantees are encouraged to be supportive of these areas as well.

Focus areas in which HRSA has a primary interest include:

Access to Quality Health Services (#1)
Educational and Community-Based Programs (#7)
HIV and AIDS (#13)
Maternal, Infant, and Child Health (#16)
Oral Health (#21)
Public Health Infrastructure (#23)

Volumes I and II of Healthy People 2010: Conference Edition (B0074) are for sale at $22 per set by the ODPHP Communication Support Center, P.O. Box 37366, Washington, D.C. 20013–7366. Each of the 28 chapters of Healthy People 2010 is priced at $2 per copy. Telephone orders can be placed to the Center at (301) 468–5690. The center also sells the complete Conference Edition in CD-ROM format (B0071) for $5.

This publication is available as well on the Internet at www.health.gov/healthypeople. Web site viewers should proceed to ''Publications''.

Access and Cost Containment Relative to Pharmaceuticals

Within available resources, HRSA is willing to provide technical assistance to ''safety net'' providers regarding pharmacy affairs. HRSA's Office of Pharmacy Affairs (OPA), previously known as the Office of Drug Pricing, is responsible for administering a major program of drug discounts, the 340B Drug Pricing Program and its Prime Vendor. Many HRSA grantees, as well as some other entities, are eligible to participate in this major program. HRSA grantees that are eligible to participate in the 340B Drug Pricing Program and its Prime Vendor are subject to a notice of grant award statement regarding an assessment of potential savings from doing so. OPA is aware of other drug discount programs, and other options for stretching funds for pharmaceuticals, that various safety net providers may be eligible for, and can assist entities in accessing these resources. For further information, OPA may be contacted by telephone at 1–800–628–6297 or 301–594–4353; or by mail at Room 10–1A1, East West Towers, 4350 East-West Highway, Bethesda, MD 20814.

Opportunity to Comment—Simplification of Federal Grant Programs

On November 20, 1999, the President signed into law the Federal Financial Assistance Management Improvement Act (Public Law 106–107) whose purposes are to improve the delivery of services to the public and the effectiveness and performance of Federal grant programs. HRSA and other Federal agencies are working with OMB to: develop uniform administrative rules and common application and reporting systems; replace paper with electronic processing in administration of grant programs; and identify statutory impediments to grant program simplification.

Consultation with the recipient community is an important part of the grant program simplification effort. We welcome ideas to make it easier for State, local, and tribal governments and nonprofit organizations to apply for and report on Federal grants. Please send your comments via email to: PL106107@os.dhhs.gov and be sure to include the name of the organization you represent.

We want to know which processes in the grants life cycle need streamlining and/or improvement, and your suggestions for achieving improvements. We need to know what is most important to you in terms of grants simplification. Finally, we want you to identify the specific grant program(s) that you find to be most burdensome, with some detail about why they are burdensome, individually or collectively, because we need to focus our efforts on those programs that are in the greatest need of review and streamlining.

Your input is valued, and is part of the larger process of achieving the goals of P. L. 106–107, namely simplification of Federal grant programs for the benefit of our recipients. Please note there will not be any individual response to the input, however we intend to periodically provide summary information relating to implementation of the law, under the ''What's New'' link in GrantsNet (www.hhs.gov/grantsnet). Thank you for your participation.

HRSA's Field Offices

Northeast Cluster

Philadelphia Field Office—Field Director, Vincent C. Rogers (215) 861–4422

Boston Field Office—Assistant Field Director, Kenneth Brown (617) 565–1420

New York Field Office—Assistant Field Director, Ron Moss (212) 264–3032

Southeast Cluster

Atlanta Field Office—Field Director, Ketty M. Gonzalez (404) 562–7972

Midwest Cluster

Chicago Field Office—Field Director, Deborah Willis-Fillinger (312) 353–6835

Kansas City Field Office—Assistant Field Director, Hollis Hensley (816) 426–5226

West Central Cluster

Dallas Field Office—Field Director, Frank Cantu (214) 767–3872

Denver Field Office—Assistant Field Director, Jerry Wheeler (303) 844–3203

Pacific West Cluster

San Francisco Field Office—Field Director, Thomas Kring (415) 437–8090

Seattle Field Office—Assistant Field Director, Richard Rysdam (Acting) (206) 615–2491

Related World Wide Web Addresses

HRSA Preview online
http://www.hrsa.gov/grantsf.htm
HRSA Home Page
http://www.hrsa.dhhs.gov/
DHHS Home Page
http://www.os.dhhs.gov/
Grantsnet

http://www.hhs.gov/progorg/grantsnet/index.html
PHS Grants Policy Statement
http://www.nih.gov/grants/policy/gps/
Catalog of Federal Domestic Assistance (CFDA)
http://www.gsa.gov/fdac/
Code of Federal Regulations
http://www.access.gpo.gov/nara/cfr/cfr-table-search.html
OMB Circulars
http://www.whitehouse.gov/WH/EOP/omb
http://www.whitehouse.gov/omb/grants/index.html#circulars
Federal Register
http://www.access.gpo.gov/su_docs/aces/aces140.html
Healthfinder
http://www.healthfinder.gov/
Fedworld Information Network
http://www.fedworld.gov/
State Single Points of Contact (SPOC)
http://thomas.loc.gov/

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Federal Register

Friday,
July 7, 2000

Part IV

Environmental Protection Agency

40 CFR Part 146

Revision to the Federal Underground Injection Control (UIC) Requirements for Class I—Municipal Wells in Florida; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL–6729–2]

RIN 2040–AD40

Revision to the Federal Underground Injection Control (UIC) Requirements for Class I—Municipal Wells in Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing changes to the Underground Injection Control (UIC) regulations that would affect specific Class I municipal wells in Florida. Groundwater monitoring has revealed that injected or native formation fluids have migrated into underground sources of drinking water (USDW) as a result of Class I municipal well injection activity in areas of Florida with unique geological conditions. Such fluid migration is not allowed under current Federal UIC regulations. The proposed changes would allow for continued injection by existing Class I municipal wells that have caused or may cause such fluid movement into USDWs in specific areas of Florida if certain requirements are met which provide adequate protection for underground sources of drinking water. This proposed rule would only affect wells in certain parts of Florida that dispose of treated domestic wastewater through Class I injection wells.

DATES: Comments must be submitted on or before September 5, 2000.

Public hearings will be held:

August 22, 2000, 1:00 p.m. to 4:00 p.m., Tampa, Florida

August 22, 2000, 6:00 p.m. to 9:00 p.m., Tampa, Florida

August 24, 2000, 1:00 p.m. to 4:00 p.m., West Palm Beach, Florida

August 24, 2000, 6:00 p.m. to 9:00 p.m., West Palm Beach, Florida

ADDRESSES: Send written comments to Nancy H. Marsh: U.S. Environmental Protection Agency, Region 4; 61 Forsyth St., SW, Atlanta, GA, 30303. Comments may be submitted electronically to marsh.nancy@epa.gov. For additional information see Additional Docket information in the **SUPPLEMENTARY INFORMATION** section of this **Federal Register**.

Public hearing locations are:

Travelodge, 820 East Busch Boulevard, Tampa, Florida 33612

The Sheraton West Palm Beach Hotel, 630 Clearwater Park Road, West Palm Beach, Florida 33401

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Nancy H. Marsh, Ground Water & UIC Section, EPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303 (phone: 404–562–9450; E-mail: marsh.nancy@epa.gov) or Howard Beard, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W.,Washington, DC 20460 (phone: 202–260–8796; E-mail: *beard.howard@epa.gov*). For general information, contact the Safe Drinking Water Hotline, phone 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern daylight-saving time.

SUPPLEMENTARY INFORMATION:

Additional Docket Information

When submitting written comments (see **ADDRESSES** section above) please submit an original and three copies of your comments and enclosures (including any references). For an acknowledgment that we have received your information, please include a self-addressed, stamped envelope. EPA will not accept facsimiles (faxes).

The record is available for inspection from 8 a.m. to 3:30 p.m. Eastern daylight-saving time, Monday through Friday, excluding legal holidays at the Environmental Protection Agency, Region 4 Library (9th Floor), Sam Nunn Atlanta Federal Center, 61 Forsyth St., S.W., Atlanta, GA 30303–8960. For information on how to access Docket materials, please call (404) 562–8190 and refer to the Florida UIC docket.

Regulated entities. This proposed regulation is limited in application to the owners and/or operators of existing Class I underground injection wells that inject domestic wastewater effluent in certain parts of Florida. Regulated categories and entities include:

Category	*Examples of regulated entities*
Municipalities and Local Government.	Class I municipal injection wells disposing of domestic wastewater effluent in certain parts of Florida.
Private	Class I municipal injection wells disposing of domestic wastewater effluent in certain parts of Florida.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 146.15 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Preamble Outline

I. Background
- A. Statutory and Regulatory Framework
- B. Domestic Wastewater Disposal in Florida Through Class I Wells
  - 1. Fluid migration requirements
  - 2. Florida geology
- C. 1999 Stakeholder Meeting
- D. Proposed Regulations
  - 1. Flexibility provided in SDWA Section 1421
  - 2. What the proposal will allow
  - 3. Rule applicability
  - 4. Monitoring
  - 5. Operating conditions
  - 6. Demonstration review
- E. The Cost of Compliance

II. Regulatory Impact/Administrative Requirements
- A. Executive Order 12866: Regulatory Planning and Review
- B. Executive Order 13045: Children's Health Protection
- C. Paperwork Reduction Act
- D. Regulatory Flexibility Act
- E. Executive Order 13132: Federalism
- F. Unfunded Mandates Reform Act
- G. National Technology Transfer and Advancement Act
- H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
- I. Plain Language

I. Background

A. Statutory and Regulatory Framework

Class I underground injection wells are regulated under the authority of Part C of the Safe Drinking Water Act (''SDWA'' or ''the Act'') (42 U.S.C. 300h *et seq.*). The SDWA is designed to protect the quality of drinking water sources in the United States and prescribes that:

> Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons. (Section 1421(d)(2) of the SDWA, 42 U.S.C. 300h(d)(2).)

Part C of the Act specifically mandates the regulation of underground injection. The Agency has promulgated a series of UIC regulations under this authority at 40 CFR Parts 144–147. The

chief goal of any Federally-approved UIC Program (whether administered by the State or EPA) is the protection of underground sources of drinking water (USDWs). This includes not only those aquifers which are presently being used for drinking water, but also those which may potentially be used in the future. EPA has established through its UIC regulations that underground aquifers with less than 10,000 mg/l total dissolved solids (TDS) which contain a sufficient quantity of ground water to supply a public water system are USDWs. (40 CFR 144.3)

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for effective State programs to prevent underground injection that endangers drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 CFR Parts 144 and 146, on May 19, 1980 (45 FR 33290), and technical requirements, in 40 CFR Part 146, on June 24, 1980 (45 FR 42472). The regulations were subsequently amended on August 27, 1981 (46 FR 43156), February 3, 1982 (47 FR 4992), January 21, 1983 (48 FR 2938), April 1, 1983 (48 FR 14146), July 26, 1988 (53 FR 28118), December 3, 1993 (58 FR 63890), June 10, 1994 (59 FR 29958), December 14, 1994 (59 FR 64339), June 29, 1995 (60 FR 33926) and December 7, 1999 (64 FR 68546). Section 1421(b)(3)(A) of the Act also provides that EPA's UIC regulations shall ''permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.''

When EPA promulgated its UIC regulations, it defined five classes of injection wells in § 144.6. Class I wells are defined as wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, a USDW. Class I wells can be hazardous, industrial or municipal waste disposal wells. EPA is only discussing existing Class I municipal wells in this proposed rule. Class I municipal wells can be owned by public and private entities.

Section 1422 of the Act provides that States may apply to EPA for national primary enforcement responsibility to administer the UIC program. Those States receiving such authority are referred to as ''Primacy States.'' Florida received national primary enforcement responsibility for the UIC program for Class I, III, IV and V wells on March 9, 1983. UIC regulations specific to Florida's primacy program are established in Part 147, Subpart K. For the remainder of this preamble, references to the UIC Program ''Director'' means the Secretary of the Florida Department of Environmental Protection (FDEP). Currently, all UIC Programs in Indian Country for Florida are directly implemented by EPA. There are no known Class I municipal wells in Florida in Indian Country.

B. Domestic Wastewater Disposal in Florida Through Class I Wells

Beginning more than 20 years ago, municipalities in Florida began to pursue the use of underground injection as an alternative to surface disposal of treated wastewater from domestic wastewater treatment facilities. Underground injection technology was employed to relieve stress to surface water environments because it was technologically feasible to inject large volumes of wastewater into deep cavernous formations. Through technical and monetary assistance, EPA supported construction of many of these facilities in an effort to safeguard surface waters. Through injection technology, domestic wastewater facilities have been able to dispose of large quantities of domestic effluent, with the resulting benefit of reducing impacts to surface ecosystems. Facilities that inject domestic wastewater into wells below the lowermost USDW, are considered to have a Class I municipal injection well and in Florida inject into zones ranging from 650 to 3,500 feet below land surface.

The volumes of domestic wastewater permitted for injection at Class I municipal well facilities presently range from less than one million gallons per day (MGD) at the Gasparilla Island Water Utilities to about 110 MGD at Miami-Dade Water & Sewer Department, South District Wastewater Treatment Plant. Florida requires that domestic wastewater must be treated to secondary wastewater treatment (See 40 CFR Part 133) standards at a minimum prior to injection.

At the time Florida permitted the currently operating Class I municipal wells, characterization of the geology indicated that there was adequate confinement to separate the injection fluids from the USDW. Because it was thought there was adequate confinement, it was believed that injection fluids would never migrate upwards into the shallower geologic formations containing USDWs. However, monitoring of injection operations over the past several years has indicated some deep geologic zones provide less confinement between formations than originally thought. In a few cases, fluid movement has occurred into the base of the lowermost USDW.

1. Fluid Migration Requirements

In addition to municipal wells, Class I wells also include hazardous or nonhazardous industrial wells which inject into geologic formations below the lowermost USDW. (Hazardous waste injection must meet additional Resource Conservation and Recovery Act (RCRA) requirements. *See* 40 CFR Part 148.)

When EPA promulgated its regulations for the UIC program, it established different requirements for each class of wells, based upon the uses and risks of various types of wells. All classes of wells are required to comply with § 144.12(a) which states:

> No owner and/or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons.

Then, for Class I, II and III wells, § 144.12(b) more specifically provides that:

> if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement.

In contrast to subsection (a), which, for all classes of wells, prohibits fluid movement that endangers USDWs, Section 144.12(b) requires for Class I, II and III wells, that a State or Federal UIC program director, upon detection of contaminant movement into a USDW, prescribe requirements to prevent any such movement, regardless of whether the movement may endanger the USDW.

In addition to § 144.12(b), EPA established technical and other requirements for specific classes of wells in Parts 144 and 146 regulations. The Parts 144 and 146 regulations address siting, construction, operation, and closure of wells. Section 144.12(b) and the specific technical requirements of Parts 144 and 146 regulate the activities through which fluid movement may result and impose requirements designed to ensure that Class I, II and III wells will not endanger USDWs by prohibiting movement of *any* fluid into the USDW.

Today's proposed change to the technical requirements in Part 146 for Class I municipal wells in certain parts of Florida will be implemented through

the addition of § 146.15 pursuant to the authority of Section 1421(b)(3)(A) of the SDWA. Section 1421(b) of the SDWA requires that EPA promulgate regulations which provide the minimum requirements for an effective UIC program: such regulations ''shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources.'' (Section 1421(b)(1), 42 U.S.C. § 300h(b)(1).) Section 1421(b)(3)(A) also provides that EPA regulations ''shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.'' (Section 1421(b)(3)(A), 42 U.S.C. § 300h(b)(3)(A).) The proposed change in the technical requirements for Class I municipal wells in certain parts of Florida is being undertaken pursuant to Section 1421(b)(3)(A) in recognition of the appropriateness of a different standard of USDW protection in light of Florida's unique geology, hydrogeology and historical (as well as present and future) wastewater disposal needs.

2. Florida Geology

In Florida, as in most areas of the country, sedimentary rocks are the predominant rock type, although the specific types of sedimentary rocks are different. In other areas, the underlying rock consists of clastic rock (sandstone, siltstone, and shale) and carbonate rock (limestone and dolomite). Limestone and dolomite are often classified as carbonate rock because of their mineral composition. Limestone is often formed by accumulation of organic remains such as corals or shells, and consists mainly of calcium carbonate. Dolomite is composed of the mineral calcium magnesium carbonate and is generally formed by alteration of limestone. Clastic rocks are formed from weathering and erosion and are made up of fragments of sand, silt, and clay. This eroded clastic material is transported and deposited at locations where it becomes the subsurface rock after burial and compression.

Where sedimentary rocks exist, clastic rocks (sandstones, siltstones, shales) and carbonate rocks (limestones and dolomites) comprise the geologic formations that serve as the injection zones and confining zones for underground injection activity. Whether a rock layer can serve as an injection zone or a confining zone depends on its porosity (the amount of pore space between grains of sand) and its permeability (the interconnectivity of this pore space). In general, rocks with higher porosity and permeability usually serve as injection zones because these characteristics readily allow for the fluids that naturally exist in the pore spaces (known as native, formation, or connate fluids) to be displaced by injection fluids. Rock layers with lower permeability or porosity do not allow such movement, and typically serve as confining zones. Sandstones usually serve as injection zones because their porosity and permeability allows for native formation fluids to move freely and be displaced by injection fluids. Siltstones generally are not good injection zones because they have less permeability than needed for injection operations. However, they also generally have too much permeability to serve as a confining unit. Shales often serve as confining zones for underground injection purposes because they have high porosity but low permeability (fluids do not move freely through the zone).

Limestone and dolomite sequences can be lithologically complex because, within a carbonate rock layer, the porosity and permeability may be greatly affected by geologic processes that occur after the rocks are formed. These include tectonic fracturing and chemical interactions between carbonate rock and fluids traveling through these fractures. The porosity and permeability of carbonate rock has been enhanced, reduced, and, in places, eliminated. The porosity and permeability variations of the carbonate rocks of peninsular Florida, which define their confining ability, may be quite local in nature.

That is, even within the same geological horizon or geological deposit of a particular time, there may be areas of high porosity and permeability close to low-porosity areas of porosity and permeability. This can complicate or compromise the use of carbonate rocks as injection or confining zones.

Sedimentary rock types in a given location vary based on changes in the environment at the time they were deposited. Carbonate sediments may develop in many environmental settings, but the most prolific accumulations occur in warmer climates which are conducive to the development of corals and other skeletal marine organisms with shells composed of calcium carbonate minerals. A lack of clastic deposition also favors carbonate deposition. If clastic sediments start to be deposited on a coral formation, the sediments would bury and kill the organisms, thereby preventing further growth of the coral formation.

In many areas of the country, sequences of sediment deposition alternate between clastic and carbonate rocks, reflecting changes in the depositional environment. Clastic sediments usually accumulate near the medium that transported the sediments, such as the mouth of a river. Carbonate sediments, on the other hand, generally accumulate near where they are formed, such as a coral formation. The thickest deposits of carbonate rocks occur where there are warm climates and limited media (rivers for example) to transport clastic sediment.

The current injection and confining zones in peninsular Florida exist in what is known as the Floridan Aquifer System. The Floridan Aquifer System is made up of carbonate rocks. Parts of the Floridan Aquifer System also are USDWs. The rocks were formed on a broad, marine shelf with a warm climate, which was distant from sources of clastic sediment such as rivers. This setting allowed for the development of thick deposits of limestone and dolomite (carbonate rock) without significant amounts of sandstones, siltstones, and shales (clastic rock) found in other areas of the country. Because of the absence of shales in peninsular Florida, which are frequently the confining zones in other areas of the country, the carbonate rocks themselves must serve as both the confining and injection zone. This is unusual and unique, but possible because of the variability in the porosity and permeability of carbonate rocks as discussed previously as well as the existence of numerous vertical and horizontal faults within the formations.

The porosity and permeability variations of the carbonate rocks of peninsular Florida and the existence of fractures within the formation determine their confining ability. The porosity varies greatly, even within the same horizon or geological deposit of a particular time. While the confining ability within the rock sequences that comprise the Floridan Aquifer appears adequate for most injection facilities, there are some injection well locations where the carbonate formation does not appear to provide adequate confinement. This is substantiated by water quality analysis of monitoring wells at selected injection facilities. While most of the country can depend on clastic shales for confinement, Florida's geology has very different characteristics which were not considered during original promulgation of the Class I regulations.

It now appears, from recent well monitoring data, that upward fluid movement from some Class I municipal operations occurs in Florida because the injection fluid from Class I municipal wells has a lower density (lower total

dissolved solids) than the native formation fluids. This tends to cause the less dense injection fluids to rise to the top of the injection zone preferentially through fractures that may exist within the formations. Because of its buoyancy, the injectate may also rise above the injection zone if these migration pathways exist. This monitoring data also indicates that injection fluid has migrated vertically into USDWs.

The application of the proposed rule is limited to both certain geologic conditions and certain geographic areas in Florida. It is limited geographically to the following counties: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. These counties are included in this proposed rule because they have the unique geologic conditions that are predominated by carbonate rocks discussed previously. The counties were selected using a map adapted from Florida Geological Survey map series 94 ''Potential Subsurface Zones for Liquid-Waste Storage in Florida,'' created by James A. Miller of the United States Geological Survey in 1979. The geological conditions considered are those where the injection and confining zones are both in the Floridan Aquifer, and no clastic confining unit separates the injection zone from the lowermost USDW. EPA requests comment on whether these are the appropriate counties to target in this proposal or whether additional (or fewer) counties in Florida should be included. See United States Geological Survey's website for specific information on Florida's geology at http://www.usgs.gov.

C. 1999 Stakeholder Meeting

To assist in developing an approach to deal with the Class I municipal wells in Florida, EPA held a stakeholder meeting on July 7, 1999, in West Palm Beach, Florida to solicit stakeholder input. Over 100 people attended the meeting in person or via conference call with 30 people giving oral comments. Additional written statements have been received since the meeting. Municipalities, industry, environmental groups and private citizens participated. At that meeting, EPA presented four general options then being considered: (1) Make no regulatory change, (2) reclassify the wells from Class I municipal to Class V municipal, (3) convert the wells directly to Class V by allowing injection directly into the USDW, and (4) make some regulatory change. The following is a discussion of each of these options.

Option 1: Make no regulatory change. This option would require those facilities where it has been shown that fluids are migrating into a USDW to either cease Class I injection and find another disposal alternative or obtain an aquifer exemption to allow continued injection. Some facilities indicated that, because of other state laws and rules, there is no surface water disposal option available to them. Other facilities said they would have to treat the effluent to a much higher standard than is currently required in order to use surface waters as a disposal option. If a facility would choose to obtain an aquifer exemption, they would need to show that the aquifer is not reasonably expected to supply a public water system, which would be very difficult to show.

Option 2: Reclassify the wells from Class I municipal wells to Class V wells. This option would have involved the determination that the facility no longer meets the regulatory definition of a Class I well, *i.e.,* a well injecting below the lowermost formation containing a USDW (40 CFR 144.6). Under this option, EPA and stakeholders discussed whether facilities with fluid movement could seek reclassification in a permit action from Class I to Class V on the basis that injection is taking place into (rather than below) the formation that contains the USDW. Under current Florida requirements, if a Class V well is discharging into a USDW, the facility must meet the national primary drinking water standards at the point of discharge. Compliance at the point of discharge could make this option more costly to the discharger than Option 1. The Agency is not planning to allow reclassification unless the well was misclassified in the first instance. Misclassification might have occurred if the well did not originally meet the definition of a Class I well. The facility could demonstrate this if new information has become available that proves that the well originally was injecting into a USDW and therefore would meet the definition of a Class V well.

Option 3: Convert the wells to Class V by allowing injection directly into the USDW. Under this option, wells would inject municipal wastewater directly into or above the formation containing the lowermost USDW. This option is different from the reclassification option (Option 2) because the well would have to be physically altered to inject into the USDW. Similar to the previous option, under current Florida rules, a facility would have to meet national primary drinking water standards at the point of discharge under this option. Several stakeholders commented that the formations within the USDW do not have sufficient capacity to accept the quantities of fluid currently injected into the deeper formations which, because of their unique hydrogeologic characteristics, can accept large quantities of fluid. This option has always been available to the facilities but has not been used because of these limitations and the extensive treatment that would be required for the discharge to meet the State's standards.

Option 4: Make some regulatory change. This is the option that is being proposed today and will be discussed in Section D.

Participants in the stakeholder meeting suggested that protecting ground water was a high priority. Some municipalities advocated reclassification to Class V wells while others said a regulatory change would be more beneficial. Municipalities advocated the reclassification of the wells to Class V. Environmental groups generally wanted to require the facilities to apply higher levels of treatment prior to injection. Many felt that injection was still a viable option but attention should be paid to protect the future use of the ground water resource.

D. Proposed Regulations

1. Flexibility Provided in SDWA Section 1421

The SDWA requires EPA to promulgate regulations that contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources. The Act further states that:

> Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons. (42 U.S.C. 300h (d)(2))

EPA responded to the SDWA mandate (1421(b)(5)) that underground injection not endanger USDWs by requiring that Class I wells prevent the movement of *any* fluids into a USDW. However, EPA prescribed no limits on the quality or quantity of the fluids being injected. EPA established a ''no fluid movement'' requirement for all Class I wells even though such wells are different with respect to their design, construction, and operation. EPA believed a uniform standard would be easier to interpret,

comply with, and enforce, and such a standard was generally accepted among the regulated community. This acceptance was based upon the assumption that specific strata existed around the country that could generally serve as a barrier to fluid movement and that, therefore, there was no need for additional limits on effluent quantity or quality. This was also thought to be true in Florida, even though Florida's geology does not fit the ''classic'' model.

Since the original UIC regulations were passed, information from several deep monitoring wells placed at the base of the lowermost USDW near certain municipal injection wells in Florida have shown evidence that there has been fluid migration out of the designated injection zone. Through evaluation of this information, it is suspected that sufficient geologic strata separating the injection zones and the USDW do not exist in certain parts of Florida. Therefore, considering the State's unique geology, the assumption underlying the development of the fluid movement prohibition for Class I municipal wells needs (i.e., availability of adequate confinement) to be reviewed for Florida. Since current Federal UIC regulations do not provide Class I municipal wells with the flexibility to demonstrate that injection and any subsequent fluid movement would not endanger underground drinking water sources, EPA has decided that such flexibility should now be built into the Florida-specific UIC regulations for existing municipal Class I wells.

The Act permits EPA, under Section 1421(b)(3)(A), to consider specific State geologic, hydrological and historical conditions when passing regulations to prevent endangerment. Section 1421(b)(3)(A) states, ''The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.'' The proposed rule is being developed based on South Florida's unique carbonate—rock geology, discussed previously, the vast hydrological capacity that characterize the formations where wastewater is injected and the extent to which municipalities in South Florida have turned to Class I wells as a very important method for wastewater disposal. Florida is currently also the only State in the country that disposes of treated domestic waste through Class I municipal injection wells. EPA believes that all these conditions support the regulatory approach being proposed here for existing Class I municipal wells in certain parts of Florida.

2. What the Proposal Will Allow

EPA is now considering a regulatory approach for existing Class I municipal wells in certain counties in Florida that addresses the lack of sufficient confinement of Class I municipal injection while continuing to meet the requirement of the Act to prevent underground injection that endangers underground drinking water sources. These counties are: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. The proposed rule provides an option for qualified operators of domestic wastewater facilities in these counties to continue disposal underground rather than relying on surface and/or ocean disposal of effluent. Further, the proposed rule would compel facilities to provide more advanced wastewater treatment that will raise the economic value of the treated effluent and in turn promote greater wastewater reuse.

The proposed rule creates, for certain Florida Class I wells that inject domestic wastewater, an authorization to inject, regardless of fluid movement into the USDW, so long as the facility can demonstrate that it will meet certain protective criteria relating to the quality of the injected fluid, and that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards. The proposed rule is consistent with the mandate of the SDWA, as it establishes requirements which prevent endangerment of USDWs. The conditions placed upon wells receiving this authorization to inject are designed to prevent endangerment of USDWs, while providing for the possibility of continued injection operations. In order to further ensure that the authorization to inject is consistent with the goals of the SDWA, the proposal specifies that EPA participate in the review and approval of the facility's application for this authorization, even though the State of Florida has primacy for the Class I UIC program. EPA will have 90 days to disapprove the State's approval of any authorization under this proposed rule. If EPA does not respond within 90 days, the demonstration is approved.

EPA is co-proposing for public comment two approaches for regulating Class I municipal wells in specific areas of Florida where injection has caused or may cause fluid movement into a USDW. The two options are: Option 1—Facilities must provide advanced wastewater treatment with a demonstration that the injectate will not cause a USDW to exceed any primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.,* Federal or State health advisories); and Option 2—Facilities must conduct an in-depth hydrogeologic demonstration and must provide advanced treatment, as necessary, to ensure that injectate will not cause a USDW to exceed any primary drinking water regulations in Part 141 of this chapter and other health based standards. The requirements of these options are in paragraph (d).

The difference between these two options is that Option 2 would require a much more extensive demonstration than in Option 1 because a high level of treatment before injection provides a safety net of contaminant removal. Both of these proposals apply to existing municipal wells which inject domestic wastewater effluent.. An existing well is defined as a well for which a complete UIC construction permit application has been received by the Director on or before the date of publication of this proposed rule in the **Federal Register**. This rule is proposed for existing wells only because, given current knowledge of the existing fluid migration problems, future well applications will be reviewed with more scrutiny than wells that have already been permitted and such review will ensure that adequate confinement exists so that fluid movement should not occur. The Agency is requesting comments on whether this proposed rule should apply to existing wells only, or if this proposed rule should also apply to new wells.

Although the municipal wells that are covered by this proposed rule receive primarily domestic wastewater, they also receive some wastewater from industrial sources. This rulemaking does not specifically require that these industrial facilities have a pretreatment program in place that would require them to pretreat the wastewater that enters the facility's treatment system. Such a program may be necessary to address contaminants that enter a facility's wastewater treatment system and are not sufficiently removed by the treatment system to prevent concentrations of the contaminant from entering a USDW and causing the USDW to exceed drinking water regulations or other health based standards. Although Florida requires that publicly owned treatment works (POTWs) greater than 5 million gallons

per day (MGD) meet certain pretreatment requirements, this may not sufficiently address contaminants in fluids that move into a USDW as a result of underground injection from smaller POTWs or others that could be exempt from existing pretreatment requirements. EPA therefore solicits public comment on the need by the Agency to require pretreatment as an additional condition of authorization under today's proposal and, whether to extend the pretreatment standards presently required by the State to injection facilities with less than 5 MGD.

3. Rule Applicability

This proposed rule applies only to existing Class I municipal wells which inject treated domestic wastewater effluent that have caused or may cause fluid movement into USDWs in specific counties in Florida. These counties are: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. This rule applies to both publically and privately owned facilities. The definition of domestic wastewater can be found in paragraph (c) of this proposed rule.

4. Monitoring

EPA is considering adding more specific monitoring requirements for the effluent and the ground water than specified in § 146.13. The effluent will be characterized initially to determine the level of contaminants in the wastewater and then at least annually to ensure that the treatment process is meeting its objectives. This monitoring, at a minimum, would be for all contaminants regulated under the national primary drinking water regulations and other health based standards. The Director shall also require that the owner and/or operator develop and implement an ambient/ground water monitoring program. The ground water monitoring program will, at a minimum, analyze the ground water to determine if any primary drinking water regulations in Part 141 of the chapter or other health based standards have been violated. The monitoring is to verify that the injection operation shall not endanger the USDW through movement of the injectate or formation fluids. These requirements would be incorporated as permit conditions of an operation permit under the Florida UIC program. Additional requirements, such as the construction of additional monitoring wells may be needed on a case-by-case basis. EPA is requesting comments on any additional monitoring requirements for the final rule.

5. Operating Conditions

Operating conditions determined necessary to prevent endangerment of the USDW by the demonstration will be incorporated by the Director as permit conditions to either a permit modification or permit issuance. Conditions may include, but are not limited to, treatment requirements including pretreatment (if any), monitoring criteria and frequency, and reporting frequency.

The options which are being co-proposed for paragraph (d) are as follows:

Option 1—Advanced wastewater treatment with a non-endangerment demonstration. The authorization to inject under Option 1 requires that the owner and/or operator of a Class I municipal well injecting domestic wastewater effluent treat their wastewater by advanced treatment methods and high-level disinfection and demonstrate that the injection of the wastewater effluent would not cause fluids that exceed the national primary drinking water regulations or other health based standards to enter the USDW. The non-endangerment demonstration would focus on any contaminants that still exceed national drinking water regulations or other health based standards after advanced wastewater treatment. The demonstration would identify any such contaminants and demonstrate that they would not cause similar exceedances in the USDW.

EPA solicits public comment on four alternatives for the appropriate level of advanced wastewater treatment, nutrient removal, and high-level disinfection that should be required of these facilities. The final rule will specify only one alternative.

Advanced treatment options reflect a wide range of biochemical oxygen demand (BOD) removal and nutrient removal capabilities. In designing the Clean Water Needs Survey, States and EPA identified four advanced treatment options that represent a range of treatment scenarios commonly used by municipalities for advanced wastewater treatment. These include plants designed to meet BOD levels of 10–24 mg/l with and without nutrient removal capability, and plants designed to meet more stringent BOD levels of less than 10 mg/l with and without nutrient removal capability. EPA is considering a range of advanced treatment alternatives, and is seeking comment on which alternative to specify in the final rule if Option 1 is selected. The alternatives evaluated and proposed are:

Treatment to 10–24 mg/l BOD with disinfection;
Treatment to 10–24 mg/l BOD with disinfection and nutrient removal;
Treatment to <10 mg/l BOD with disinfection;
Treatment to <10mg/l BOD with disinfection and nutrient removal.

Advanced treatment is any level of treatment in excess of secondary treatment and may include processes to remove nutrients such as nitrogen and phosphorus and other pollutants found in the wastewater stream entering the municipal treatment plant. To achieve high level disinfection, a process designed to kill most microorganisms in water including pathogenic (disease causing) bacteria, owners and/or operators must allow the wastewater to remain in contact with at least 1.0 mg/l of free chlorine for at least 15 minutes of contact with no fecal coliform. Facilities will also be required to provide dechlorination, if necessary, as part of the advanced wastewater treatment to ensure that USDWs are not endangered from disinfection by-products.

Option 2—In-depth hydrogeologic demonstration and advanced treatment, as necessary. The authorization to inject under Option 2 requires that the owner and/or operator of a Class I municipal well injecting domestic wastewater effluent provide a hydrogeologic demonstration that the injection operation would not cause fluids that will migrate into the USDW to exceed the national primary drinking water regulations or other health based standards. EPA anticipates that this hydrogeologic demonstration would be similar in detail to that required for a RCRA land ban no-migration petition and consist of an evaluation of the results of sampling and analysis for contaminants in wastewater prior to injection and in water samples from deep monitoring wells at the base of the USDW and would also include detailed hydrogeologic modeling of fluid transport from the injection zone to those areas of the subsurface including USDWs to which the fluid and contaminants in the fluid have migrated and may migrate. This demonstration would include at a minimum: ground-water modeling, geochemical analysis and effluent and ground-water monitoring and analysis. The items included in the demonstration are intended to characterize how the effluent is expected to move vertically and horizontally after it is injected into the subsurface and to determine if the

effluent or the formation fluids will enter the USDW. If it is anticipated that the fluids may enter the USDW, the demonstration must show that the fluids will not endanger the USDW and exceed primary drinking water regulations in Part 141 or other health based standards.

If the owner and/or operator cannot successfully demonstrate that the injection operation meets these criteria, the owner and/or operator must treat the injectate to address the contaminants of concern and satisfy the criteria of paragraph (d) that the injectate would not cause a USDW to exceed the national primary drinking water regulations or other health based standards prior to receiving an authorization for permit authorizing continued injection pursuant to this rule. The Agency also solicits comments as to whether this hydrogeologic demonstration, and the determination of what level of advanced wastewater treatment may be necessary, should include a requirement for pretreatment as may be necessary to address contaminants that may move through a treatment system and enter into a USDW at concentrations of concern.

The differences between the two options proposed under paragraph (d) are that the first option gives a higher level of confidence that any fluids that migrate into the USDW will meet the applicable standards. This is because the facilities must design, construct and operate a specific level of advanced wastewater treatment and also demonstrate that, after the effluent is treated, any constituent which exceeds any primary drinking water regulations in Part 141 or other health based standards at the point of injection will not exceed the standards when the fluid enters the base of the USDW.

For Option 1, this demonstration could be as simple as referencing technical literature describing die-off rates for viruses and other pathogens, or how metals bind in soils compared to the results of ground water sampling and analysis pursuant to § 146.13. EPA expects that there would be fewer parameters (contaminants in concentrations of concern) requiring a demonstration in Option 1 since the effluent would be subject to advanced treatment and disinfection and less ground water modeling.

For Option 2 under paragraph (d), the facility is afforded the opportunity to demonstrate the necessity for additional treatment and tailor the level of treatment to the quality of fluid that has migrated or may migrate into the base of the USDW. The level of treatment needed to make a successful demonstration under Option 2 could vary from facility to facility. Constituents in the effluent that exceed primary drinking water regulations in Part 141 or other health based standards would need to be sampled at the base of the USDW, analyzed and evaluated to ensure that the requirements of this proposed rule are met. EPA solicits comments on each of these options for ensuring that any fluid that does migrate into the base of a USDW will meet applicable standards. In particular, EPA solicits comments on the ability of owners and operators to provide the kind of hydrogeologic and other information necessary for a successful hydrogeologic demonstration.

If it adopts Option 2, EPA also proposes to require that all facilities qualifying for authorization to inject under this section must have advanced wastewater treatment and high level disinfection in place by the year 2015. This requirement is to address water shortages in Florida and encourage water reuse. The year 2015 is being proposed in order to provide the wastewater treatment facilities with adequate time to evaluate all of their municipal wastewater reuse and disposal options and to plan for any construction of treatment facilities needed. Prior to the year 2015, under Option 2, the owner/operator of the wastewater treatment facility would still have to demonstrate that they will not endanger USDWs. EPA is soliciting comment on the appropriate level of advanced wastewater treatment and nutrient removal to be required by the facilities by 2015. The levels of treatment being considered are the same as those listed in Option 1 above.

6. Demonstration Review

The demonstration under paragraph (d) must be submitted to both the State and EPA for review. The authorization to continue to inject under a permit shall become final 90 days after the State Director approves the demonstration and submits the approval in writing to the Regional Administrator if he or she does not disapprove the authorization within the 90 days. Any disapproval by the Regional Administrator shall state the reasons and shall constitute final Agency action. The owner and/or operator must update the required demonstration with each subsequent Class I operation permit application, every five (5) years, as required in paragraph (f). The update shall include an analysis of all monitoring results since the original demonstration and verification that the original demonstration is still valid for the disposal operation.

EPA is soliciting comments on all aspects of this proposal, and in particular on whether to select either Option 1 or 2 or, if it would be more appropriate, to select a combination of both options. In addition the Agency requests comments on EPA's regulatory approach to continue to allow facilities with fluid movement to inject by improving the quality of the injected fluid. In particular, the Agency invites comment and data on any commenters' preference among the various means of domestic wastewater disposal in Florida, the effects that those methods have on Florida's fragile environment, and the extent to which this proposal may result in the increased or decreased use of reuse or other disposal practices such as ocean or other surface water disposal.

E. The Cost of Compliance

The proposed rule does not impose any new requirements on Class I municipal wells in Florida, but merely provides an alternative authorization to inject for which a well owner and/or operator may apply if the well falls within the narrow criteria of the proposed rule. Because continued operation of Class I municipal injection wells which result in movement of fluids into or between USDWs is contrary to existing Federal UIC regulations, the proposed rule offers such facilities an ability to continue to operate legally provided they meet the new requirements.

The proposed rule presents owners and/or operators of such Class I wells with options for continued authorization to inject should fluid movement occur. In the absence of the proposed regulatory changes, facilities that exhibit fluid movement would need to close their wells and adopt alternative disposal practices. The economic analysis for this proposed rule compares the costs of compliance under this proposed rule with the costs of compliance under the current regulations. Small private and governmental entities are the likely owners and/or operators of Class I wells in Florida disposing of domestic wastewater effluent.

The factors taken into account in estimating these costs include the number of existing facilities that are potentially affected by the proposed rule, the current regulatory requirements for Florida Class I municipal facilities, and the current extent of treatment at each facility. Many of the cost estimates are presented as a range, with the lower figures representing an assumption that 25% of the existing facilities will experience

fluid movement and the upper figures representing an assumption that 100% of the facilities will experience fluid movement. Specific to Option 2, of the facilities that do not currently provide advanced wastewater treatment and high level disinfection, 25% are assumed to be able to make the hydrogeologic demonstration with the addition of high-level disinfection only and 75% will have to provide both high-level disinfection and advanced wastewater treatment. The baseline assumes the costs associated with complying with the current UIC regulations. These costs include closing the wells and adopting alternative disposal practices, which could consist of surface water disposal, ocean outfall, and/or reuse.

Four different treatment scenarios have been evaluated with each of the proposed options. The target contaminant removal levels are based on the pollutant parameter biochemical oxygen demand (BOD) removal:

Treatment to 10–24 mg/l BOD with disinfection

Treatment to 10–24 mg/l BOD with disinfection and nutrient removal

Treatment to <10 mg/l BOD with disinfection

Treatment to <10mg/l BOD with disinfection and nutrient removal

Given these assumptions, the costs to Class I municipal facilities , including monitoring costs, in Florida are estimated to be as follows (in millions of dollars):

Baseline Scenario: Total Capital Costs $721–2,882

Total Annualized Costs (Capital & Operating) $203–811

Regulatory Option 1: Total Capital Costs $254–1,678

Total Annualized Costs (Capital & Operating) $131–587

Total Annualized Savings from Baseline $72–224

Regulatory Option 2: Total Capital Costs $201–1,329

Total Annualized Costs (Capital & Operating) $101–453

Total Annualized Savings from Baseline $102–358

EPA is soliciting comments on the assumptions used in the economic analysis that was developed for this proposed rule. The economic analysis is part of the record for this proposed rule (see Additional Docket Information in the **SUPPLEMENTARY INFORMATION** section above).

EPA notes that a facility may choose to cease underground injection and, as permitted under State or Federal law, opt to discharge to surface waters, either to fresh waters, estuaries or through an outfall to ocean waters. EPA solicits comments regarding whether these are preferred disposal methods. In particular, EPA solicits comments about what disposal actions municipalities may take if there is no regulatory change or in the event either one of the two proposed options is promulgated. EPA also solicits comments on the potential economic or environmental impact of either making no change or choosing either of the proposed options.

II. Regulatory Impact/Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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 proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed rule provides an optional authorization for certain Class I wells in Florida to inject domestic wastewater effluent only if the practice is demonstrated not to endanger underground sources of drinking water. The criteria established in the rule safeguards these resources for all potential users, including but not limited to children.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to secondarily treated wastewater injected into the subsurface through Class I municipal wells in Florida.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 317.17) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The proposed ICR estimates monitoring, demonstration, reporting and recordkeeping burdens and costs for Class I underground injection well operators in Florida under the proposed rule. Information regarding wastewater quality, treatment and migration will be collected as outlined in the rule for review by the State of Florida as primacy agent. Under the proposed rule, the primacy State would be required to revise and resubmit a UIC program application for Class I wells. EPA is also requesting that facility owners and/or operators demonstrate, using a modeling study, that by the time effluent reaches the USDW, it is in compliance with the SDWA national primary drinking water standards. Wells for which it cannot be demonstrated that sufficient water

quality exists at the bottom of the USDW would have to upgrade their wastewater treatment to qualify for the proposed authorization to inject.

Information collected under SDWA and, by extension, this ICR is expected to be used by EPA and the State of Florida to help insure the maintenance of clean, safe public drinking water supplies.

Operators of injection wells may claim confidentiality, as provided in § 144.5, Confidentiality of Information. If confidentiality is requested, the information is treated in accordance with the provisions of 40 CFR Part 2, Public Information.

Information collected under this ICR is intended for the Agency's and/or State's internal use and there are no plans to routinely release or publish any of the data. However, if no claim of confidentiality is made at the time of submission, the information can be made available to the public without further notice.

EPA estimates that the average annual burden on Class I municipal well operators (which includes public and private entities) and the State of Florida will be 1,556 hours for Option 1 of the proposed rule and 2,265 hours for Option 2. This is based on an estimate that 1 State, Florida, will need to provide 44 responses each year at 10 hours per response for Option 1 and 44 responses at 10.6 hours per response for Option 2. It is also estimated that 9 Class I municipal well operators will need to provide an average of 15.7 responses each year at an average of 7.9 hours per response for Option 1 and an average of 15.7 responses each year at an average of 12.8 hours per response for Option 2. The labor burden is estimated for activities associated with reading and understanding the rule, performing and reviewing monitoring, performing and reviewing engineering demonstrations, and meeting primacy requirements. In addition to the recordkeeping and reporting burden, it is estimated that an average annual cost of $688,678 will be incurred for capital and operations and maintenance (O&M) costs for Option 1, and $884,943 annually for Option 2. Capital costs are for installation of monitoring wells and associated equipment needed to collect data under the rule requirements. O&M costs are for acquisition of contracting services to perform analysis and demonstrations required by the proposed rule.

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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 7, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by August 7, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose annual revenue is less than $5 million according to 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.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. EPA estimates there are approximately 42 existing Class I municipal wells that at some point during their operating life could cause fluid movement into a USDW and fall within the scope of this proposed rule. Of these 42 facilities, 13 are small governmental entities and one is a small business.

As discussed in section I.E., the economic impact of this proposed rule actually results in a cost savings to the Class I municipal facilities compared to the baseline, *i.e.*, complying with current regulations. Because Class I wells which may seek the authorization to inject provided by the proposed rule are only affected if they cause fluid movement prohibited by present law, EPA has determined that the effect on small entities will be positive to the extent they are impacted. If the entity chooses not to seek the authorization to inject, the legal status of its continued operations is not impacted by the proposed rule. We have therefore concluded that today's proposed rule either will have no effect on or, in the alternative, will provide regulatory relief for small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome

comments on issues related to such impacts.

E. Executive Order 13132: Federalism

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

Under Section 6 of 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. EPA also 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.

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. The proposed rule allows for an optional alternate method for the State of Florida to use to ensure that no owner and/or operator would endanger a USDW by injection of domestic wastewater effluent into a Class I municipal well. EPA is not proposing that an owner and/or operator must use this proposed authorization, but rather is proposing options that owners and/or operators of existing Class I municipal wells may wish to explore in order to maintain the use of their injection operations. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with the Florida Department of Environmental Protection in developing this rule and they agree with EPA's strategy.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Because the authorization to inject provided for by the proposed rule is optional on applicants, the costs incurred by an entity in conjunction with such authorization to inject under the proposed rule are discretionary, not mandated. The total cost impact, in comparison to other alternatives to provide effective wastewater disposal, is anticipated to be positive for those entities that choose to avail themselves of the option provided by this proposed rule. This rule will reduce the burden imposed by the current regulations. Thus, today's rule is not subject to the requirements of Section 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule is not targeted at small governments. It offers owners and operators of Class I wells in certain parts of Florida which inject domestic wastewater effluent an alternative method of compliance with the existing UIC rule, which prohibits injection that endangers USDWs, without requiring the facilities to cease injection and abandon their existing Class I municipal injection wells. This rule will provide them with a less burdensome alternative for compliance. Thus, today's rule is not subject to the requirements of Section 203 of UMRA.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal

governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them. At present, there are no Class I UIC wells used for domestic wastewater effluent disposal in Florida that are owned or operated by an Indian tribal community. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

List of Subjects in 40 CFR Part 146

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and Recordkeeping requirements, Water Supply.

Dated: June 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Regulations is proposed to be amended as follows:

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 146.15 is added to read as follows:

§ 146.15 Class I municipal well alternate authorization in Florida.

(a) Authorization to inject pursuant to this section is limited to existing Class I municipal wells in specific geographic regions as defined in paragraph (h) of this section that inject domestic wastewater effluent as defined in paragraph (c) of this section and that have caused or may cause fluid movement into USDWs. Pursuant to this section, an existing Class I well does not violate the regulatory prohibitions in Parts 144 and 146 of this chapter against the movement of injection or formation fluids into a USDW, provided that such well operates consistently with the requirements of this section.

(b) For purposes of this section, an existing Class I well is defined as a well for which a complete UIC construction permit application has been received by the Director on or before the date of publication of this proposed rule in the **Federal Register**.

(c) For purposes of this section, injected fluids shall be considered domestic wastewater effluent if they are injected by a facility that:

(1) Is a publicly or privately owned and operated domestic wastewater treatment facility;

(2) Receives wastewater derived principally from dwellings, business buildings, institutions, and the like, commonly referred to as sanitary wastewater or sewage, and

(3) Provides at least secondary treatment, as described in § 133.102 of this chapter, of the waste prior to injection.

Option 1 for Paragraph (d)

(d) In order for a Class I municipal well to qualify for authorization pursuant to paragraph (a) of this section, the owner and/or operator shall treat the well's injectate prior to injection using advanced wastewater treatment and high-level disinfection and shall also provide a non-endangerment demonstration that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.,* Federal and State health advisories). This demonstration would focus on any contaminants that are expected to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.*, Federal and State health advisories) after treatment and would include, at a minimum, effluent monitoring and an analysis of any such contaminants following injection. To achieve high level disinfection, a process designed to kill most microorganisms in water including pathogenic (disease causing) bacteria, owners and/or operators must allow the wastewater to remain in contact with at least 1.0 mg/l of free chlorine for at least 15 minutes of contact with no fecal coliform. The minimum level of advanced wastewater treatment that must be provided is:

Option a: 10–24 mg/l BOD with disinfection.
Option b: 10–24 mg/l BOD with disinfection and nutrient removal.
Option c: <10 mg/l BOD with disinfection.
Option d: <10 mg/l BOD with disinfection and nutrient removal.

Option 2 for Paragraph (d)

(d) In order for a Class I municipal well to qualify for authorization pursuant to paragraph (a) of this section, the owner and/or operator must provide a hydrogeologic demonstration to the satisfaction of the Director and EPA that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.,* Federal and State health advisories). This demonstration would include at a minimum: ground-water modeling, geochemical analysis and effluent and ground-water monitoring and analysis. If they cannot make this demonstration, the owner and/or operator must provide sufficient advanced wastewater treatment, nutrient removal and high-level disinfection to enable them to demonstrate that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (e.g., Federal and State health advisories).

(e) The demonstration pursuant to paragraph (d) of this section must be submitted to both the State and EPA for review. The demonstration shall be reviewed and either approved or disapproved in writing by the Director. If the Director disapproves the demonstration, the applicant shall not have met the requirements of paragraph (d) of this section. If the Director

approves the demonstration, he or she shall promptly mail a copy of the approval to the Regional Administrator. The authorization shall become final if the State Director submits the approval in writing to the Regional Administrator and the Regional Administrator has not disapproved the authorization within 90 days. Any disapproval by the Regional Administrator shall state the reasons for disapproval and shall constitute final Agency action. In the event the Regional Administrator exercises this authority to disapprove the demonstration, the applicant shall not have met the requirements of paragraph (d) of this section. The Director's approval and any conditions of the authorization shall be included as part of the permit decision.

(f) *Monitoring and reporting.* In addition to meeting the requirements of § 146.13, the owner/operator must perform such monitoring, analysis, and reporting as specified by the Director in the permit authorization. The monitoring required under this section will include, at a minimum, initial characterization and annual analysis of the injectate for contaminants covered by the primary drinking water regulations in Part 141 of this chapter or other health based standards. The Director shall also require that the owner/operator develop and implement an ambient/ground water monitoring program.

The ground water monitoring program will, at a minimum, analyze the ground water to determine if any primary drinking water regulations in Part 141 of the chapter or other health based standards have been violated. The monitoring is to verify that the injection operation shall not endanger the USDW through movement of the injectate or formation fluids. These requirements would be incorporated as permit conditions of an operation permit under the Florida UIC program. Additional requirements, such as the construction of additional monitoring wells may be needed on a case-by-case basis.

(g) Owners and/or operators of Class I injection wells which are operating under the authority of paragraph (d) of this section shall update and resubmit their demonstration under paragraph (d) of this section with each subsequent Class I operation permit application, every five (5) years. The owner and/or operator shall submit, as part of such subsequent demonstrations, all monitoring results not available at the time of the prior permit review and verification that the original demonstration is still valid for the disposal operation.

(h) Authorization to inject domestic wastewater through existing Class I wells pursuant to this section is limited to municipal wells in Florida in the following counties: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia.

Proposed only if Option 2 for paragraph (d) of this section is selected:

(i) Beginning on January 1, 2015, owners and/or operators of Class I injection wells operating under the authority of this section may not qualify for authorization pursuant to this section unless the injectate has been subject to advanced wastewater treatment and high-level disinfection.

The minimum level of advanced wastewater treatment that must be provided is:

Option a: 10–24 mg/l BOD with disinfection, or

Option b: 10–24 mg/l BOD with disinfection and nutrient removal, or

Option c: <10 mg/l BOD with disinfection, or

Option d: <10 mg/l BOD with disinfection and nutrient removal.

(2) The owners and/or operators would still have to demonstrate that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.,* Federal and State health advisories).

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Part V

Department of Labor

Pension and Welfare Benefits Administration

Proposed Exemptions; Bank of Oklahoma (the Bank) and First Tennessee National Corporation; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10590, et al.]

Proposed Exemptions; Bank of Oklahoma (the Bank) and First Tennessee National Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No.__ , stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Bank of Oklahoma (the Bank) Located in Tulsa, OK

[Application No. D–10590]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase or redemption of shares by an employee benefit plan (the Plan), in certain mutual funds that are either affiliated with the Bank (the Affiliated Funds) or are unaffiliated with the Bank (the Third Party Funds),[1] in connection with the participation by the Plan in the Bank-sponsored Foundations Program (the Foundations Program).

In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply to the provision, by the Bank, of asset allocation services to an independent fiduciary of a participating Plan (the Primary Independent Fiduciary) or to a participant (the Directing Independent Fiduciary) of a Plan that provides for participant investment direction (the Participant-Directed Plan), which may result in the selection of portfolios in the Foundations Program for the investment of Plan assets, by the Primary Independent Fiduciary or the Directing Independent Fiduciary, and the receipt of fees by the Bank and/or its affiliates.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The participation by a Plan in the Foundations Program is approved by a Primary Independent Fiduciary or a Directing Independent Fiduciary, in the case of a Participant-Directed Plan, and, no Plan covering employees of the Bank or any of its affiliates is eligible to participate in the Foundations Program.

(b) As to each Plan, the total fees that are paid to the Bank and its affiliates constitute no more than reasonable compensation for the services provided.

(c) With the exception of distribution-related fees that are paid to the Bank pursuant to Rule 12b–1 (the Rule 12b–1 Fees) of the Investment Company Act of 1940 (the Investment Company Act) which are offset, no Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Funds.

(d) The terms of each purchase or redemption of shares in the Funds remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Bank provides written documentation to each Plan's Primary Independent Fiduciary or Directing Independent Fiduciary of its recommendations, as well as on the design and parameters with respect to an asset allocation model (the Asset Allocation Model) based upon objective criteria that are uniformly applied.

(f) Any recommendation or evaluation made by the Bank to a Primary Independent Fiduciary or a Directing Independent Fiduciary is implemented only at the express direction of such fiduciary.

(g) The Bank retains an independent financial analyst (the Independent Financial Analyst) to—

(1) Review the investments of Plan assets in a Third Party Fund for purposes of performance and suitability;

[1] The Affiliated Funds and the Third Party Funds are collectively referred to herein as the Funds.

(2) Review determinations by the Bank to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund; and

(3) Ensure that only one Fund fits an asset segment (the Asset Segment) such that there is no overlap between a Third Party Fund and an Affiliated Fund. Further, such Independent Financial Analyst may not derive more than 5 percent of its total annual revenues from the Bank and/or its affiliates.

(h) The quarterly fee that is paid by a Plan to the Bank and its affiliates for asset allocation and related services (the Wrap Fee) rendered to such Plan under the Foundations Program is offset by—

(1) All investment management fees (the Advisory Fees) that are paid to it and/or its affiliates by the Affiliated Funds;

(2) All non-advisory fees, including custodial fees, Rule 12b–1 Fees or subadministration fees (collectively, the Administrative Fees) that are paid to the Bank and/or its affiliates by the Affiliated Funds; and

(3) All Administrative Fees which include, but are not limited to, Rule 12b–1 Fees and sub-transfer agency fees, that are paid to the Bank and/or its affiliates by the Third Party Funds, such that the sum of the offset and the net Wrap Fee will always equal the aggregate Wrap Fee, thereby making the Bank's selection of Affiliated Funds or Third Party Funds for the Asset Allocation Models a ''fee-neutral'' decision.

(i) The Plan is automatically rebalanced on a quarterly basis (using net asset values of the affected Funds as of the close of business) on a pre-established date to the Asset Allocation Model previously prescribed by such fiduciary if authorized in writing by the Primary Independent Fiduciary, and if one or more Fund allocations deviates from the Asset Allocation Model prescribed by such fiduciary because—

(1) At least one transaction required to rebalance the Plan among the Funds involves a purchase or redemption of securities valued at $100 or more; and

(2) The net asset value of the Fund affected would be more than 5 percent of the Plan's investment in such Fund.

(j) The Bank may make adjustments to the composition of the Asset Allocation Model (the Model Adjustments) unilaterally only within certain authorized parameters approved by the Primary Independent Fiduciary, or upon the consent of the Primary Independent Fiduciary, if the Bank proposes to exceed the parameters.

(1) If the Model Adjustment is made unilaterally pursuant to Section II(j) above, the Bank may only deviate from the Normal Position of a given Asset Allocation Model within a specified range, not to exceed 15 percent (above and below) the Normal Position under Section III(1), which is applied to the Asset Allocation Model's entire allocation.

(2) With respect to a Model Adjustment requiring independent fiduciary consent, the Bank may not change the asset mix outside the limits authorized by the Primary Independent Fiduciary unless it provides the Primary Independent Fiduciary and the Directing Independent Fiduciary, upon the request of the Primary Independent Fiduciary, 30 days' advance written notice of the impending change.

(k) The notice referred to above in Section II(j) includes a termination advisory form (the Termination Advisory) which—

(1) Advises the Primary Independent Fiduciary of the right to withdraw from the Foundations Program or, in the case of the Directing Independent Fiduciary, of the right to transfer to a different Asset Allocation Model without penalty; and

(2) States that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the Plan will be reallocated within the revised Normal Positions for the Asset Allocation Model, effective as of a given date.

(1) The Bank provides the Termination Advisory to the Primary Independent Fiduciary and, if applicable, the Directing Independent Fiduciary, at least annually; and provides the Termination Advisory in all cases whenever the Bank—

(1) Makes a Model Adjustment where fiduciary consent is needed;

(2) Adds a new Fund to an Allocation Model;

(3) Removes an existing Fund within an Allocation Model; or

(4) Increases its Wrap Fee. Under such circumstances, the notice and Termination Advisory are provided at least 30 days prior to the implementation of the change.[2]

(m) With respect to its participation in the Foundations Program, prior to purchasing shares in the Affiliated Funds and the Third Party Funds, each Primary Independent Fiduciary, and, if applicable, each Directing Independent Fiduciary, receives the following written or oral disclosures from the Bank:

(1) A brochure describing the Foundations Program;

(2) A Foundations Program Asset Allocation Account Application;

(3) A Foundations Program Asset Allocation Account Purchase Order;

(4) A Foundations Program Account Agreement (the Account Agreement) providing detailed information on the Foundations Program; the fee structure of the Foundations Program; procedures and limitations imposed on the Bank with respect to Model Adjustments; rebalancing of a participating Plan investor's account; and the Bank's affiliation or non-affiliation with the Funds, including a copy of the executed Account Agreement between the Plan and the Bank, to the Primary Independent Fiduciary rather than to the Directing Independent Fiduciary;

(5) The Bank's Form ADV—Part II which contains a description of the Bank's affiliation, if any, with the sponsors, distributors, administrators, investment advisers, sub-advisers, custodians and transfer agents of each Affiliated Fund and Third Party Fund; and

(6) Copies of the proposed and final exemptions with respect to the exemptive relief described herein. (In the case of a Participant-Directed Plan, this information may be provided directly by the Bank to the Primary Independent Fiduciary for distribution to the Directing Independent Fiduciaries.)

(n) Having acknowledged receipt of the documents described in paragraph (m) of Section II, the Primary Independent Fiduciary submits a completed Account Agreement to the Bank and represents in writing to the Bank that such fiduciary is—

(1) Independent of the Bank and its affiliates;

(2) Knowledgeable with respect to the Plan in administrative matters;

(3) Able to make an informed decision concerning the Plan's participation in the Foundations Program; and

(4) Knowledgeable with respect to funding matters related to the Plan.

(o) In addition to the initial disclosures described above in paragraph (m) of this Section II, prior to investment in an Asset Allocation Model, the Primary Independent Fiduciary or, if applicable, the Directing Independent Fiduciary—

[2] For an annual mailing of the Termination Advisory or in the event the Bank makes a Model Adjustment that is outside of current parameters or a Fund is added or substituted, the Termination Advisory will include language similar to that contained in Section II(k)(1) and (2). In the event the Bank proposes an increase in its Wrap Fee, the Termination Advisory will also include language similar to that contained in Section II(k)(1). However, under such circumstances, Section II(k)(2) will be modified state that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the revised Wrap Fee will be effective as of a specified date.

(1) Receives a written analysis from the Bank based on the fiduciary's Investor Profile as well as a description of the Asset Allocation Model recommended by a Bank's investment counselor which includes a description of the actual fee structure and the actual basis points to be rebated to such Plan fiduciary;

(2) Receives a prospectus for each Affiliated Fund and Third Party Fund in which the Plan may be invested and, upon such fiduciary's request, is provided a Statement of Additional Information which supplements the prospectus; and

(3) Acknowledges receipt of the foregoing documents in writing to the Bank.

(p) With respect to their ongoing participation in the Foundations Program, each Primary Independent Fiduciary and/or Directing Independent Fiduciary receives the following continuing disclosures from the Bank:

(1) Copies of applicable prospectuses;

(2) Written confirmations of each purchase or redemption of shares of an Affiliated Fund or a Third Party Fund, including transactions implemented as a result of a realignment of the Asset Allocation Model's investment mix or from the rebalancing of a Plan's investments in conformity with the selected Asset Allocation Model;

(3) Telephone quotations of such Plan's balance (or if relevant, individual account balances of Directing Independent Fiduciaries) under the Foundations Program;

(4) Periodic, but at least quarterly, account statements showing the Plan's value (or if relevant, individual account balances of Directing Independent Fiduciaries), a summary of purchase, sale and exchange activity and dividends received or reinvested and a summary of cumulative realized gain and/or loss;

(5) Semiannual or annual reports that include financial statements for the Funds as well as a description of the fees paid to the Bank and its affiliates;

(6) At least annually, a written or oral inquiry from the Bank to ascertain whether the information provided on the Investor Profile is still accurate and to determine if such information should be updated;

(7) A Termination Advisory provided on an annual basis as well as at other times noted in paragraph (1) of this Section II; and

(8) The Bank's investment advisory and other agreements with any Affiliated Fund as well as its distribution agreement pertaining to the Third Party Funds, upon request of the Primary Independent Fiduciary. (Communications received from the Funds (e.g., prospectuses, annual reports, quarterly reports, notices regarding changes in Fund managers, proxy mailings, etc.) will be distributed to the Primary Independent Fiduciary, who may elect to pass them through to the Directing Independent Fiduciaries.)

(q) The Bank maintains, for a period of six years, the records necessary to enable the persons described in paragraph (r) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (r) of this Section II below.

(r)(1) Except as provided in section (r)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) of this Section II are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(r)(2) None of the persons described above in paragraphs (r)(1)(B)–(r)(1)(D) of this paragraph (r) are authorized to examine the trade secrets of the Bank or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Bank'' means the Bank of Oklahoma, N.A., a subsidiary of BOK Financial Corporation and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of the Bank includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Bank.

(2) Any individual who is an officer, director or partner in the Bank or a person described in subparagraph (b)(1) of this Section III, and

(3) Any corporation or partnership of which the Bank or an affiliate or person described in subparagraphs (b)(1) or (b)(2) of this Section III, is a 10 percent or more partner or owner.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(e) The term ''Plan'' refers to an employee benefit plan which is eligible to participate under the Foundations Program. Such Plans are qualified under sections 401(a) and 501(a) of the Code and include Keogh plans (Keogh Plans); individual retirement accounts (IRAs); simplified employee pension plans (SEP–IRAs); Salary Reduction Simplified Employee Pensions (SARSEPs), provided that the SARSEP was established prior to January 1, 1996, the date as of which the Code provision authorizing such plans was repealed); and savings incentive match plans for employees (SIMPLEs); and, in the case of a Participant-Directed Plan, the individual account of a Directing Independent Fiduciary.

(f) The term ''Directing Independent Fiduciary'' means, as to a participating Plan, a participant in a Participant-Directed Plan that is authorized to direct the investment of his or her account balance.

(g) The ''Administrative Fees'' refer to custodial, Rule 12b–1 Fees, and sub-administration fees that are paid to the Bank or its affiliates from or on behalf of the Affiliated Funds on account of the Bank's services to the Affiliated Funds, as well as Rule 12b–1 Fees, sub-transfer agency fees and other fees that may be paid to the Bank or its affiliates on account of the investment of participating Plans in the Third Party Funds.

(h) The ''Advisory Fees'' refer to investment advisory fees that are paid by the Affiliated Funds to the Bank and its affiliates.

(i) The term ''Affiliated Fund'' means a portfolio of an investment company registered under the Investment Company Act for which the Bank or an affiliate of the Bank acts as the investment adviser, and may also serve as custodian or sub-administrator.

(j) The term ''Asset Segment'' refers to a subdivision of each asset class (the Asset Class) into which the Asset Allocation Model is divided (*e.g.*, international equities is an Asset Segment under the Asset Class ''stocks''). Asset Segments are determined by the Bank with reference to recognized investment objectives and styles established by independent mutual fund analysts such as Morningstar, Inc. (Morningstar) and Lipper Analytical Services, Inc. (Lipper).

(k) The ''Investment Management Group'' refers to a committee comprised of the Bank's senior investment professionals.

(l) The term ''Model Adjustment'' means an adjustment to the Normal Position of an Asset Allocation Model (*i.e.*, a change in the Asset Allocation Model among the three Asset Classes, the division of the Asset Class into Asset Segments, and the identity of the Funds which represent the various Asset Segments).

(m) The ''Normal Position'' refers to the initial allocation of each Asset Allocation Model among the various Asset Classes, Asset Segments and Funds.

(n) The ''Offset Fees'' refer to the Advisory Fees and Administrative Fees that are paid by, or on behalf of, the Funds to the Bank and/or its affiliates and which are offset against the Wrap Fee.

(o) The term ''Participant-Directed Plan'' refers to a qualified Plan under which participants direct the investments of their individual accounts.

(p) The term ''Primary Independent Fiduciary'' refers to a plan fiduciary within the meaning of section 3(21)(A) of the Act who has (1) investment discretion and authority over the Plan's assets and (2) is not an affiliate of the Bank. Typically, the Primary Independent Fiduciary will be the plan administrator, the employer which sponsors the Plan, an investment committee appointed under the Plan document or an IRA account holder.

(q) The term ''Termination Advisory'' refers to the notice advising the Primary Independent Fiduciary or the Directing Independent Fiduciary of the right to withdraw from the Foundations Program without penalty. The Termination Advisory, which will contain instructions on its use, will be provided to such participants on an annual basis, or whenever the Bank makes a Model Adjustment that is outside of a current Allocation Model, in the event a new Fund is added to an Allocation Model or an existing Fund is removed from an Allocation Model, or the Bank's Wrap Fee is increased. Depending on the circumstances precipitating its distribution, the Termination Advisory will include a provision advising the Primary Independent Fiduciary or the Directing Independent Fiduciary that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the authorization of the Plan's participation in the Foundations Program will continue, or the participating Plan will be reallocated in accordance with the revised Normal Position for the Asset Allocation Model in which the Plan's assets are invested, or the Bank's Wrap Fee will be increased. The Bank will provide the Termination Advisory to the Primary Independent Fiduciary and/or the Directing Independent Fiduciary at least 30 days prior to the implementation of the proposed change.

(r) A ''Third Party Fund'' is a portfolio of an investment company that is registered under the Investment Company Act for which neither the Bank nor any affiliate of the Bank acts as investment adviser, custodian and/or sub-administrator.

(s) The term ''Wrap Fee'' refers to the Plan or account-level fee the Bank, BOSC, Inc. (BOSC) and/or their affiliates charge each Plan for the asset allocation, custodial and related services under the Foundations Program.

(t) The term ''Independent Financial Analyst'' means an independent third party which has entered into a written contract with the Bank to (1) review the investment of Plan assets in a Third Party Fund, (2) review the Funds each time the Bank determines to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund, and (3) determine that only one Fund fits an Asset Segment such that there is no overlap between a Third Party Fund and an Affiliated Fund. The Independent Financial Analyst may not derive more than 5 percent of its total annual revenues from the Bank or its affiliates, including its fee for serving as the Independent Financial Analyst.

As for minimum credentials, the Independent Financial Analyst will be a Chartered Financial Analyst and will be employed by a firm which has at least a regional presence in the investment products and services industry. In addition, the individual assigned the duties of the Independent Financial Analyst must alone, or with his or her employer, have a certain minimum number of years experience in the investment products and services industry and must not be affiliated with the Bank, BOSC or BISYS Fund Services, Inc. (BISYS). Should the Bank replace the Independent Financial Analyst, that entity must meet the same requirements applicable to the current Independent Financial Analyst. In addition, the Bank will be required to provide the Department with advance written notification of the change in Independent Financial Analysts and the qualifications of the successor. Unless the Department objects to the change, the Foundations Program will operate with the new Independent Financial Analyst.

Summary of Facts and Representations

Description of the Parties

1. The parties to the transactions discussed herein are described as follows:

(a) *The Bank* is a national bank headquartered in Tulsa, Oklahoma and a wholly owned subsidiary of BOK Financial Corporation, an Oklahoma corporation. The Bank maintains 60 branch banks in the Oklahoma City and Tulsa, Oklahoma metropolitan areas. It is the largest financial institution headquartered in Oklahoma and provides a full array of commercial banking and retail banking services while its non-bank subsidiaries engage in various bank-related services, including mortgage banking and providing credit life, accident and health insurance on certain loans originated by its subsidiaries. The Bank also offers a variety of trust and investment services for both corporate and individual customers. For corporate clients, these services include custodianship, trusteeship, management, administration and recordkeeping of pension plans, profit sharing plans (including 401(k) plans) and master trusts.

In addition, the Bank serves as custodian of IRAs, SEP–IRAs, SARSEPs and SIMPLE Plans and it sponsors non-standardized prototype plans. Further, the Bank and its subsidiaries provide investment advisory services to trust customers and mutual funds and they manage collective investment funds. As of December 31, 1999, the Bank and its affiliates had over $8.1 billion in assets under management.

The Bank serves as each Affiliated Fund's investment adviser. Subject to the general supervision of the Affiliated Funds' Board of Trustees (the Trustees)

and in accordance with the investment objectives and restrictions of each Affiliated Fund, the Bank manages the Affiliated Funds, makes decisions with respect thereto, places orders for all purchases and sales of portfolio securities, and maintains each Affiliated Fund's records relating to such purchases. Neither the Bank nor any affiliate serves as the named distributor for any Fund.

(b) *BOSC* is a wholly owned subsidiary of the Bank and a full-service broker-dealer and investment adviser registered with the SEC and the National Association of Securities Dealers (NASD). The Bank utilizes members of BOSC's sales force who have appropriate securities licenses to market the Foundations Program. However, BOSC will not perform any brokerage transactions on behalf of the Funds.

(c) *BISYS* and its wholly owned affiliate, BISYS Fund Services Ohio, Inc. (BISYS Ohio) are not affiliated with the Bank. BISYS is the administrator and distributor of each Affiliated Fund. BISYS Ohio, a registered transfer agent, serves as the transfer agent and performs fund accounting for the Affiliated Funds. For its administrative services, BISYS may receive, from the Affiliated Funds, an annualized fee of up to 0.20 percent of each Affiliated Fund's average daily net assets. Under each Affiliated Fund's Distribution and Shareholder Services Plan (the Distribution Plan), BISYS receives Rule 12b–1 Fees on a monthly basis. The current maximum annualized Rule 12b–1 Fees paid to BISYS is 0.25 percent of the average daily net assets of each Affiliated Fund. For its transfer agency and fund accounting services, BISYS Ohio may receive annual fees of up to 0.05 percent of each Affiliated Fund's average daily net assets.

(d) *CoreLink Financial, Inc. (CoreLink)* is an affiliate of BISYS. It is a full service broker-dealer and investment adviser registered with the SEC and the NASD. It is the clearing broker for all Foundations Program transactions and maintains custody of all of the securities held under the Foundations Program.

(e) *AMR Investments* of Fort Worth, Texas, has been retained by the Bank to serve as the Independent Financial Analyst for the Foundations Program. AMR Investments is a wholly owned subsidiary of AMR Corporation, the parent company of American Airlines, Inc. Incorporated in 1986, AMR Investments is directly responsible for the investment management and oversight of AMR Corporation's defined benefit and defined contribution plans, as well as fixed income investments. AMR Investments also provides investment advisory services to institutional and retail clients and acts as manager of the American AAdvantage Funds, a family of diversified mutual funds. Further, AMR Investments offers customized fixed income portfolio management services. As a multibillion dollar asset management firm, AMR Investments has clients that include defined benefit plans, defined contribution plans, foundations, endowments, corporations and other institutional investors.

AMR Investments is not affiliated with the Bank, BOSC or BISYS. For services rendered to the Bank as the Independent Financial Analyst, AMR Investments may not derive more than 5 percent of its total annual revenues from the Bank and/or its affiliates, including its services as the Independent Financial Analyst.

(f) *The Plans* that are eligible to participate in the Foundations Program will consist of employee benefit plans that are qualified under sections 401(a) and 501(a) of the Code. The Plans will include Keogh Plans, IRAs, SEP–IRAs, SARSEPs (provided that the SARSEP was established prior to January 1, 1996, the date as of which the Code provision authorizing such plans was repealed) and SIMPLE plans as defined under 401(k)(11)(A) of the Code. The Bank may serve as an eligible Plan's trustee, custodian, recordkeeper or prototype sponsor. However, no Plan in which employees of the Bank or any of its affiliates participate will be eligible to invest in the Foundations Program.

The Funds

2. The Affiliated Funds consist of portfolios of the American Performance Funds, a diversified, open-end management investment company registered under the Investment Company Act. The Funds were organized as a Massachusetts business trust and began active operations in August 1990. Although the Affiliated Funds currently consist of ten separately-managed portfolios, it is represented that additional portfolios may be added in the future. Initially, eight Affiliated Fund portfolios will be available to investors under the Foundations Program.

Overall management and supervision of each Affiliated Fund rests with such Fund's Board of Trustees. Individual Trustees may be removed by the Board of Trustees or by the shareholders. The Trustees manage the Affiliated Funds in accordance with Massachusetts law governing business trusts. There are currently four Trustees, three of whom are not ''interested persons.'' The Trustees elect the officers of the Affiliated Funds who supervise such Funds' day-to-day operations. The members of the Board of Trustees receive fees and are reimbursed for their expenses in connection with each meeting of the Board of Trustees they attend, except that no Trustee who is an officer or employee of the Bank, any sub-adviser or BISYS receives any compensation from the Affiliated Fund for acting as a Trustee. The Affiliated Funds' officers receive no compensation from the Funds for performing the duties of their offices.

The Bank, in its capacity as investment adviser, and BISYS, in its capacity as administrator, bear all expenses incurred in connection with the performance of their duties, other than the cost of securities (including brokerage commissions) purchased for the Affiliated Funds. Such expenses may include, but are not limited to, taxes, interest, brokerage fees and commissions, fees and travel expenses for the Trustees of the Fund, SEC fees, state securities qualification fees, and the costs of preparing and printing prospectuses for regulatory purposes and for distribution to current shareholders.

3. The Third Party Funds are portfolios of diversified, open-end management investment companies registered under the Investment Company Act. They currently consist of the Federated Tax-Free Instruments, the Federated GNMA Trust, the Federated Bond Fund, Franklin Insured Tax-Free Income Fund, Federated Equity Income Fund, the Neuberger Berman Genesis Fund and the Templeton Foreign Fund. No Third Party Fund's sponsor, administrator, distributor, investment adviser or sub-adviser is affiliated with the Bank.

The Proposed Transactions

4. The Foundations Program is designed to make no-load Affiliated Funds and Third Party Funds available to an eligible Plan, thereby affording the Plan the opportunity to diversify its investments. The Foundations Program will also make professional asset allocation management available to a smaller Plan which may not have the benefit of such services. Moreover, by participating in the Foundations Program, a Primary Independent Fiduciary or a Directing Independent Fiduciary will receive a single, consolidated statement and pay a single asset management fee. Finally, all dealings between a Plan participating in the Foundations Program, the Funds and the Bank will remain on a basis which is at least as favorable to the Plan

as such dealings are with other shareholders of the Funds holding the same classes of shares as the Plan.

Accordingly, the Bank and BOSC (together, the Applicants) request an administrative exemption from the Department in order to implement the Foundations Program for Plan investors. If granted, the exemption will provide relief from section 406(a) of the Act in order to permit the purchase or redemption of shares in the Affiliated Funds and the Third Party Funds by a Plan, in connection with the Plan's participation in the Foundations Program. In addition, the exemption will provide relief from section 406(b) of the Act to allow the Bank to provide asset allocation services to a Primary Independent Fiduciary or to a Directing Independent Fiduciary of a Participant-Directed Plan, which may result in the selection of portfolios by the Primary Independent Fiduciary or the Directing Independent Fiduciary in the Foundations Program for the investment of Plan assets and the receipt of fees by the Bank and/or its affiliates.

The Applicants are concerned that the Bank's fiduciary activities under the Foundations Program (*e.g.*, recommending an Asset Allocation Model, making a Model Adjustment or rebalancing a participating Plan's account) will cause the Plan to pay additional fees (*i.e.*, Advisory Fees and Administrative Fees) to the Bank or an affiliate of the Bank or cause the Bank or a Bank affiliate to receive consideration from a third party in connection with a transaction involving the Plan. The Applicants are concerned that the combination of services the Bank will provide under the Foundations Program, particularly, recommending an Asset Allocation Model, making Model Adjustments and rebalancing participating Plan accounts, may be deemed to constitute prohibited acts of self-dealing in violation of section 406(b)(1) of the Act. Therefore, the Applicants request exemptive relief from the Department for the transactions that are described above.

Operation of the Foundations Program

5. An eligible Plan's Primary Independent Fiduciary may decide to enroll a Plan in the Foundations Program. The minimum investment required to establish an account in the Foundations Program is $10,000. In the case of a Participant-Directed Plan, the minimum applies to each account in the participating Plan. From time to time, however, the Bank may lower or waive the minimum investment amount.

At any time, a Primary Independent Fiduciary or a Directing Independent Fiduciary may add or withdraw assets of a Plan to or from the Foundations Program (subject to a $100 minimum redemption and purchase requirement per participating Plan which will continue to apply after the first year). In the case of a Participant-Directed Plan, the $100 limit will apply to each account in the Plan and the contributions will be held in the American Performance U.S. Treasury Fund, an Affiliated Fund, until such amounts reach $1,000,[3] at which time the contributions will be liquidated and the proceeds invested pursuant to the appropriate Asset Allocation Model.[4] The $100 limit will not apply if the participating Plan is completely liquidated (*e.g.*, the participant terminates employment with the plan sponsor).

6. Each participating Plan's Primary Independent Fiduciary or Directing Independent Fiduciary will complete an Investor Profile and submit it to an investment counselor employed by the Bank or an affiliate who will interact with the Plan investor. The Investor Profile is a written questionnaire designed by BISYS and the Bank to assess such fiduciary's risk tolerance and financial objectives as they apply to the participating Plan. In the case of a single-participant Plan such as an IRA, the Bank will distribute the Investor Profile and other materials directly to the Primary Independent Fiduciary. In the case of a Participant-Directed Plan, the Bank will provide Investor Profiles and other information on the Foundations Program, at the Primary Independent Fiduciary's discretion, either to the Primary Independent Fiduciary for distribution to the Directing Independent Fiduciary or, directly to the Directing Independent Fiduciary. If requested by a Primary Independent Fiduciary, the Bank may also provide additional information or documentation that is provided to such Primary Independent Fiduciary to the Directing Independent Fiduciaries.

The responses to the Investor Profile will be analyzed by investment counselors, employed by the Bank or an affiliate, utilizing software developed and maintained by BISYS. Applying objective criteria to the results of the analysis, the Bank will recommend a particular Asset Allocation Model which is appropriate for the participating Plan. The Asset Allocation Model will also describe the fee structure to be applied and the actual number of basis points to be rebated to the Plan investor and will use a spreadsheet to show how the rebate is determined.

In conjunction with the recommendation, the Bank will provide each Primary Independent Fiduciary or Directing Independent Fiduciary with written materials explaining (a) market risk, (b) what to consider when assessing one's own risk tolerance and investment objectives, (c) historical risk and return characteristics of various Asset Classes and Asset Segments, (d) the advantage of diversifying to reduce market risk, and (e) historical risk and return characteristics of various strategically-allocated portfolios. The Bank, through the investment counselor, may also describe other Asset Allocation Models that are available to the Plan and provide additional educational materials to the Primary Independent Fiduciary or the Directing Independent Fiduciary.

Before participating in the Foundations Program, each Primary Independent Fiduciary or Directing Independent Fiduciary will also be shown the historical performance of the recommended Asset Allocation Model, including the number of years in which it has produced a negative return, the average loss in each such year, the average annual return, and the performance during the Model's five best and worst years. The Primary Independent Fiduciary or the Directing Independent Fiduciary may then accept the Bank's recommendation or invest the Plan in another Asset Allocation Model. The Plan will not be permitted to invest under the Foundations Program until the Primary Independent Fiduciary or the Directing Independent Fiduciary affirmatively directs the Bank to invest Plan assets under a particular Asset Allocation Model.

At any time, a Primary Independent Fiduciary or a Directing Independent Fiduciary may submit a new Investor Profile or choose a different Asset Allocation Model. At least annually, the Bank will ask each Primary Independent Fiduciary or Directing Independent Fiduciary, in writing, whether any information included on the Investor Profile has changed. The Bank will analyze and respond to a new Investor Profile in the same manner that it responds to the original Investor Profile.

7. Currently, the Bank has developed five Asset Allocation Models. They are the Capital Preservation Model, the

[3] Because of the regularly scheduled rebalancing of each Plan investor's account, the $1,000 threshold for contributions will not apply each year to new employer or employee contributions.

[4] The Department is not providing, nor have the Applicants requested relief from the provisions of section 404(c) of the Act with respect to the Bank's temporary holding of contributions by a Participant-Directed Plan in the American Performance U.S. Treasury Fund.

Income Model, the Growth & Income Model, the Growth Model and the Aggressive Growth Model. In addition to the present Asset Allocation Models, the Bank proposes to add more Asset Allocation Models to the Foundations Program in the future.

Each Asset Allocation Model will allocate a participating Plan's assets among three major Asset Classes: cash equivalents, bonds and stocks. For example, the Bank's Capital Preservation Model is invested in Asset Classes in the following percentages: Cash Equivalents (15 percent), Bonds (60 percent) and Stocks (25 percent). Each Asset Class will be further allocated into one or more Asset Segments, each of which represents a class of investment that the Bank believes is necessary to achieve the proper mix of risk and return in an Asset Class. To this end, the Bank will use a current list of mutual fund investment objectives and investment styles developed by Morningstar and Lipper, independent mutual fund analysts to determine the appropriate Asset Segments for a particular Asset Class.[5] The Bank will utilize Morningstar to classify equity Asset Segments and Lipper to classify fixed-income Asset Segments (including money market funds which Morningstar does not classify). For example, the Stock Asset Class under the Bank's Capital Preservation Model will include investments in three Funds (the Templeton Foreign Fund, the American Performance Equity Fund and the American Performance Growth Equity Fund) representing three Asset Segments (international stocks, income-producing stocks and growth equity stocks), respectively.

The Bank's Investment Management Group, which is comprised of the Bank's senior investment professionals, will determine the allocation of each Asset Allocation Model among the major Asset Classes, as well as the allocation of the major Asset Classes among the Asset Segments. In effect, the Investment Management Group will follow the classification systems devised by Morningstar and/or Lipper in order to fill particular Affiliated Funds or Third Party Funds within the given Asset Segments.

Model Adjustments

8. The Bank's Investment Management Group creates and monitors the composition of the Asset Allocation Models and reviews each Model's composition at least monthly. As noted in Representation 7, the Investment Management Group also determines the Asset Allocation Model's division among the three Asset Classes, the division of each Asset Class into Asset Segments and the allocation of each Asset Segment among the Affiliated Funds and the Third Party Funds.[6] The breakdown among the Asset Classes and the Funds which comprise those classes when a participating Plan is first invested pursuant to the Asset Allocation Model is the Model's ''Normal Position.'' The Investment Management Group may adjust the Normal Position periodically as dictated by changing economic and market conditions. There are two types of Model Adjustments: (a) Those that the Bank may make unilaterally and (b) those that require the consent of the Primary Plan fiduciary. Any deviation from the Normal Position will apply to the Plan assets invested pursuant to the Asset Allocation Model both prior to and after the deviation (*i.e.*, both old and new money).[7]

A Model Adjustment does not include the substitution of a Fund but is deemed necessary to effect a change to an Allocation Model due to market conditions. The Bank anticipates that Funds will be substituted only under extraordinary circumstances (see Representation 14) whereby advance notice will be given to the Primary Independent Fiduciary to effect the change. Accordingly, a Model Adjustment and a Fund substitution are treated as a separate process by the Bank.

With respect to unilateral Model Adjustments, the Account Agreement entered into by each Primary Independent Fiduciary will authorize the Bank to deviate from the Normal Position of a given Asset Allocation Model within a specified range, not exceeding 15 percent above or below the Normal Position. The Model Adjustment will be made for all clients having the same Asset Allocation Model. The percentage will be applied to the Model's entire allocation, so the adjusted stock position of, for example, the Capital Preservation Model (the Normal Position of which has 25 percent invested in stocks), could range from 10 percent to 40 percent. The specified range may be higher for a deviation from the Asset Allocation Model's cash position which will be governed by the Account Agreement. Any change to an Asset Class will be separately allocated among the Asset Segments.

A corresponding decrease in an Asset Class must also fall within the authorized deviation parameters. Further, the original Normal Position will remain the standard for determining whether future Model Adjustments fall within the acceptable range.

9. The Bank may not change the Normal Position (*i.e.,* deviate more than the range specified in the Account Agreement) without providing the Primary Independent Fiduciary of each participating Plan that is invested pursuant to the affected Asset Allocation Model with a written notice of the impending change at least 30 days in advance of its effective change. If requested by the Primary Independent Fiduciary of a Participant-Directed Plan, the Bank will provide this notice to each Directing Independent Fiduciary. The 30 day notice period is intended to give the Primary Independent Fiduciary or the Directing Independent Fiduciary time to withdraw from the Foundations Program if he or she elects not to have the change made. The notice will include a Termination Advisory which will advise the Primary Independent Fiduciary or the Directing Independent Fiduciary (a) of his or her right to withdraw from the Foundations Program without penalty and (b) that

[5] The Bank will use the classification services provided by Morningstar and Lipper unless circumstances beyond its control require that the Bank select another independent, established mutual fund analyst.

[6] As discussed in Representation 11, the Investment Management Group will select a Third Party Fund to fill an Asset Segment only when (a) an Affiliated Fund representing that Asset Segment does not exist or (b) an Affiliated Fund representing the Asset Segment exists but it is not an ''equivalent'' to the Third Party Fund. To be equivalent to a Third Party Fund, an Affiliated Fund must have been publicly offering shares for at least one year. The total return performance for the Affiliated Fund must be equal to or exceed the total return performance of the Third Party Fund for either the most recent one year reporting period or the annualized three, five or ten year reporting periods. Further, the total expense ratio for the Affiliated Fund, determined in accordance with SEC rules for performance, must not be higher than the relevant Third Party Fund. In addition, as noted above, the Bank will determine which Fund fits within an Asset Segment based upon criteria developed by Morningstar and Lipper as to what type of Fund should fill that Asset Segment. As discussed in Representation 13, the Independent Financial Analyst, using Morningstar or Lipper classification criteria, will compare the Third Party Funds with the Affiliated Funds.

[7] In this regard, once the Normal Position is adjusted, the revised Normal Position will be applied to the entire Plan rather than only to amounts contributed to the Plan after the effective date of the adjustment. For example, assume that a Plan has invested $100,000 in Asset Allocation Model X, which is equally divided between Funds A and B. Because the Plan has been rebalanced, it has almost equal amounts invested in Funds A and B, despite their uneven earnings. When Asset Allocation Model X is adjusted to provide for a 55 percent investment in Fund A and a 45 percent allocation to Fund B, the entire $100,000 in the plan will be invested, accordingly—*i.e.*, $55,000 in Fund A and $45,000 in Fund B. Future contributions to the Plan will be allocated in a similar manner.

absent affirmative action by the Primary or Directing Independent Fiduciary, the Plan will be reallocated in accordance with the revised Normal Positions for the Asset Allocation Model, effective as of a given date.

If the Bank makes a Model Adjustment outside of the specified limits, the new allocation percentages will become the revised Normal Position for the Asset Allocation Model. The Account Agreement will then authorize the Bank to again deviate within the specified ranges and will require the 30 day notice and Termination Advisory described above for a shift outside the revised Normal Position.

Rebalancing

10. After a participating Plan is invested in an Asset Allocation Model, varying performance results among the Funds that comprise the Asset Allocation Model will eventually cause a Plan to fail to meet the Normal Position set forth in the applicable Asset Allocation Model. Therefore, prior to the end of each calendar quarter, the Bank will review each participating Plan to determine whether its allocation among the Funds will be materially out of line with the parameters prescribed by the Asset Allocation Model. The Bank will apply the net asset value of the affected Funds as of the end of each calendar quarter. A Plan is materially out of line with the Asset Allocation Model parameters if at least one transaction required to rebalance the participating Plan among the Funds (a) would involve a purchase or sale of securities valued at $100 or more, or (b) the net asset value of the Fund affected would represent more than 5 percent of the Plan's investment in such Fund. If a participating Plan is rebalanced, the Bank will buy and sell Fund shares from the distributor at net asset value, as of the close of business on a pre-established date within 5 business days prior to the end of the calendar quarter, in the amounts necessary to bring the participating Plan back into conformity with the appropriate Asset Allocation Model at the Asset Segment level. There will be no cross-trading of securities between the Funds. Neither the Bank nor its affiliates will receive commissions from such sales and the participating Plans will not be charged a redemption fee.

The Account Agreement will disclose the circumstances under which a participating Plan will be rebalanced and the date on which the necessary trades will occur. It is represented that rebalancing will not involve the exercise of any investment discretion by the Bank.

The Primary Independent Fiduciary or the Directing Independent Fiduciary will not be given the option of not having their account in the Plan rebalanced because this, according to the Bank, will undermine the Asset Allocation Model concept. As noted herein, each Primary Independent Fiduciary or Directing Independent Fiduciary will, however, have the option of selecting another Asset Allocation Model or withdrawing from the Foundations Program.

Fund Monitoring

11. The Bank's Investment Management Group will select and periodically review the performance and continued suitability of the Affiliated and Third Party Funds that are included within each Asset Allocation Model. The Investment Management Group will select an Affiliated Fund to fill an Asset Segment when there is an appropriate Affiliated Fund but will select Third Party Funds when (a) an Affiliated Fund representing that Asset Segment does not exist or (b) an Affiliated Fund representing the Asset Segment exists but it is not an ''equivalent'' of the Third Party Fund. As noted above, an Affiliated Fund is deemed the equivalent of a Third Party Fund if (a) the Affiliated Fund has been publicly offering shares for at least one year, (b) total return performance of the Affiliated Fund is equal to or exceeds the total return performance of the Third Party Fund for either the most recent one year reporting period or the annualized three, five or ten year reporting periods, and (c) the total expense ratio, determined in accordance with SEC rules for performance, is not higher than the relevant Third Party Fund.[8]

12. To review the selection by the Investment Management Group of a Third Party Fund to fill an Asset Segment, the Bank will retain the Independent Financial Analyst. As stated previously, the Independent Financial Analyst may not derive more than 5 percent of its total annual revenues from the Bank or its affiliates, including its fee for serving as the Independent Financial Analyst. As for minimum credentials, the Independent Financial Analyst must be a Chartered Financial Analyst and employed by a firm which has at least a regional presence in the investment products and services industry. In addition, the individual assigned the duties of the Independent Financial Analyst must alone, or with his or her employer, have a certain minimum number of years experience in the investment products and services industry and must not be affiliated with the Bank, BOSC or BISYS.

Should the Bank replace the Independent Financial Analyst, that entity must meet the same requirements applicable to the current Independent Financial Analyst. Under such circumstances, the Bank will be required to inform the Department 60 days in advance of the change. In addition, the Bank will also be required to describe the qualifications of the successor. Unless the Department objects to the change within 60 days of notification, the Foundations Program will continue to operate with the new Independent Financial Analyst.

13. On an annual basis, the Independent Financial Analyst will determine whether the use of a Third Party Fund during the previous year has satisfied the selection criteria set forth in Representation 11. (To recap, no Affiliated Fund is in existence and if in existence, the Affiliated Fund is not equivalent to the Third Party Fund.) The Independent Financial Analyst will also determine that the Third Party Fund considered by the Bank represents the correct Asset Segment based upon Morningstar or Lipper classifications. If the Independent Financial Analyst determines that a Third Party Fund has been used under circumstances which do not satisfy these criteria, an appropriate Affiliated Fund will be substituted after appropriate notice (*i.e.*, the Termination Advisory) is given to the Primary Independent Fiduciary or the Directing Independent Fiduciary, if applicable. (See Representation 14.)

Additionally, the Independent Financial Analyst will review the Funds each time the Bank determines to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund. In this regard, the Independent Financial Analyst will be required to certify that the proposed change satisfies the ''in existence'' and ''equivalence'' criteria set forth above in Representation 11 before the effective date of the change.

Further, the Independent Financial Analyst will be required to determine that for an Asset Segment there is no overlap between a Third Party Fund and an Affiliated Fund. Specifically, the Independent Financial Analyst will determine (a) that the array of Third

[8] As noted previously, assuming there are 75 Small Cap International Funds within the universe of Third Party Funds, the Independent Financial Analyst will examine all of the relevant Funds using the Morningstar or Lipper classification systems.

Party and Affiliated Funds does not include two or more Funds which are in the same classification under both the Morningstar and Lipper classification systems; and (b) that no Third Party Fund which is to be added is in the same Asset Class as an existing Affiliated Fund under both the Morningstar and Lipper classification systems.

14. If the Investment Management Group determines that an Affiliated Fund or a Third Party Fund should be replaced with another Fund, the Bank will give written notice to the Primary Independent Fiduciary of each participating Plan which is invested in the affected Asset Allocation Model at least 30 days in advance of the effective date of the Fund change. If requested by the Primary Independent Fiduciary, the Bank will also provide this notice to each Directing Independent Fiduciary. The notice will also include a Termination Advisory that will advise the Primary Independent Fiduciary of the right to withdraw from the Foundations Program or allow the Directing Independent Fiduciary to transfer to a different Asset Allocation Model without penalty.

Fee Structure

15. As to each investing Plan, the total fees that are paid to the Bank and its affiliates will constitute no more than reasonable compensation for the services provided to the participating Plans. In this regard, the Bank and its affiliates will receive four types of fees: (a) Advisory Fees from the Affiliated Funds,[9] (b) Non-Advisory Fees from the Affiliated Funds (*i.e.*, Administrative Fees), (c) Administrative Fees from the Third Party Funds, and (d) the Wrap Fee paid by each participating Plan at the Plan-level. All fees received from sources other than the participating Plan or the Plan's sponsor will be applied to offset the Plan's legal obligation to the Bank and its affiliates. Under no circumstances will such fees increase the compensation received by the Bank or its affiliates.[10]

(a) *Advisory Fees.* The annualized Advisory Fees of the Affiliated Funds, which range from 0.40 percent to 0.69 percent, are calculated daily and paid monthly on the Affiliated Fund's average daily net assets. However, the Bank may, from time to time, waive all or a portion of the Advisory Fee. Each fee arrangement between the Bank and an Affiliated Fund must be approved by the Board of Trustees of the Affiliated Fund, including a majority of the Trustees who are not ''interested persons.''

(b) *Administrative Fees from the Affiliated Funds and BISYS.* The Bank is compensated for acting as custodian to the Affiliated Funds. For its custodial services, the Bank currently receives an annual fee of 0.03 percent of the average daily net assets of each of the Affiliated Funds.

In addition, the Bank may receive Administrative Fees from BISYS in the form of annualized Rule 12b–1 Fees, pursuant to each Affiliated Fund's Distribution Plan. Such Rule 12b–1 Fees will not exceed 0.25 percent of the average daily net assets of each Affiliated Fund.[11]

Further, BISYS currently retains the Bank as sub-administrator to the Affiliated Funds. BISYS presently pays the Bank an annualized fee of 0.05 percent of each Affiliated Fund's daily net assets.

(c) *Administrative Fees from the Third Party Funds.* The Third Party Funds may pay Administrative Fees such as Rule 12b–1 Fees or similar fees to the Bank or its affiliates for shareholder services (*e.g.*, fund recordkeeping, accounting in connection with a participating Plan's purchase or redemption of shares of the Third Party Fund, processing purchase and redemption transactions involving the Plans and providing mutual fund enrollment material to Primary or Directing Independent Fiduciaries). The annualized Administrative Fees range from 0.08 percent to 0.50 percent.

(d) *The Plan-Level Wrap Fee.* For their asset allocation, custodial and related services, the Bank, BOSC, and/or their affiliates will charge each participating Plan an annual investment fee (*i.e.*, the Wrap Fee). If the Plan's average daily value (including amounts invested in either the Third Party Funds or Affiliated Funds) is less than $25,000, the Wrap Fee will equal 1.80 percent of $25,000, unless the minimum investment amount is lowered, in which case the Wrap Fee will equal 1.80 percent of the minimum investment. For balances greater than the minimum investment, the fee will be calculated as follows: 1.80 percent on $1–$99,999; 1.55 percent on $100,000–$249,999; and 1.45 percent on any balance above $250,000. Breakpoints will be calculated on a per-participating Plan basis rather than on each account in that Plan.

From time to time, the Bank may increase or reduce the Wrap Fee. In the event of a Wrap Fee increase, the Bank will notify the Primary Independent Fiduciary or, if applicable, the Directing Independent Fiduciary, of the impending increase at least 30 days prior to its effective date of the change. The written notification will include a Termination Advisory and remind the Primary Independent Fiduciary of the impending increase at least 30 days prior to its effective date. The written notification will include a Termination Advisory which will (a) advise the Primary Independent Fiduciary or the Directing Independent Fiduciary of the right to withdraw from the Foundations Program without penalty; and (b) state that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the new Wrap Fee will be effective no earlier than 30 days after the receipt of the notice and the Termination Advisory.

The Wrap Fee is assessed quarterly in arrears on the Plan's average daily net asset value during the quarter. The Wrap Fee will be deducted directly from the Plan.

Fund Fees and Offset

16. As noted in Representation 15, the Bank and its affiliates may receive, either directly or indirectly, various fees from the Affiliated Funds and the Third Party Funds which will be fully disclosed to investors in applicable prospectuses. The Bank proposes to offset all Advisory Fees, Administrative Fees and Rule 12b–1 Fees that are paid to it and its affiliates with respect to a Plan's investment in a Fund (collectively, the Offset Fees), from the

[9] It should be noted that Advisory Fees may also be paid by the Affiliated Funds to unrelated sub-advisers who may be retained by the Bank in the future to perform investment management and/or advisory services to Plans investing under the Foundations Program. These sub-advisory fees are not applied to offset the Plan's legal obligation to the Bank and should be considered by the appropriate Plan fiduciary in evaluating the appropriateness of the Foundations Program.

[10] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions Primary Independent Fiduciaries of Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Plans to assure that the services remain appropriate and that the fees paid by the Plans for such services are reasonable in relation to the value of the services provided. In considering whether to enter into the arrangement for the provision of asset allocation services, the Department emphasizes that it expects the Primary Independent Fiduciary to fully understand the operation of the Foundations Program and the compensation paid thereunder, following disclosure by the Bank of all relevant information pertaining to the Program.

[11] Under each Affiliated Fund's Distribution Plan, the Fund pays BISYS Rule 12b–1 Fees on a monthly basis [see Representation 1(c)] in order to provide distribution assistance to, or compensate financial intermediaries, broker-dealers or similar entities (including the Bank and affiliates or subsidiaries of BISYS and/or the Bank) for providing shareholder services.

quarterly Wrap Fee charged to that Plan. The Bank believes that the offset will eliminate any conflict of interest which may exist as a result of the fact that an investment in certain Funds would generate higher overall fees for the Bank and its affiliates, and will also eliminate any indirect benefit that the Bank may gain by including Funds that pay higher Advisory or Administrative Fees in the Asset Allocation Models.

The Bank will deduct the Offset Fees as follows. At the end of each quarter, the Bank will calculate the revenues that it received during the quarter in the form of Offset Fees on a *pro rata* basis for each Plan invested in the Foundations Program. These figures will be a percentage of the average daily net value of participating Plan assets in each Affiliated and Third Party Fund. The Bank will reduce the Wrap Fee charged to each Plan for that quarter by that Plan's allocable portion of the Offset Fees for the Asset Allocation Model in which the Plan's assets were invested during the quarter. Thus, the sum of the Wrap Fee which the Bank and its affiliates actually receive with respect to each Plan (following the offset) and the Offset Fees will always equal the total Wrap Fee to which the Primary Independent Fiduciary agreed to in the Account Agreement and the selection of Affiliated or Third Party Funds will always be revenue-neutral.

17. The Bank has provided the following example to demonstrate how the Offset Fee mechanism will work:

Mr. Smith meets with a Bank investment counselor on April 3, 2000. After going through the education, profiling and recommendation process, he decides to invest his IRA through the Foundations Program. Mr. Smith accepts the Bank's recommendation that, based on the results of his Investor Profile, the Growth and Income Model is the appropriate vehicle for the IRA. So, on April 3, 2000, Mr. Smith invests $47,928.76 in that Asset Allocation Model. This initial investment is allocated as follows:

Fund	Allocation (percent)	Dollar amount	Price	Shares
American Performance Treasury Money Market	5	$2,396.44	$1.00	2,396.440
American Performance Short-Term Income Fund	10	4,792.88	10.02	478.331
American Performance Intermediate Bond Fund	5	2,396.44	10.36	231.317
American Performance Bond Fund	5	2,396.44	9.53	251.463
Federated GNMA Fund	10	4,792.88	11.32	423.399
Federated Bond Fund	10	4,792.88	10.05	476.903
Federated Equity Income Fund	9	4,313.59	19.21	224.549
American Performance Equity Fund	29	13,899.34	17.96	773.905
American Performance Growth Equity Fund	9	4,313.57	12.12	355.905
Templeton Foreign Fund	3	1,437.86	11.10	129.537
Neuberger & Berman Genesis Assets Fund	5	2,396.44	14.33	167.232
Total	100	47,928.76		

Wrap Fee

Three business days prior to the end of the calendar quarter (*i.e.,* June 28, 2000), the Bank takes the following steps to calculate the fee charged to Mr. Smith's account for the second quarter of 2000:

- The Bank calculates the average balance of Mr. Smith's account during the quarter as $48,124.44.
- The annual Wrap Fee on accounts of up to $99,000 is 1.80 percent. Therefore, the quarterly fee is 45 basis points or 0.45 percent of the average daily balance during the quarter. Mr. Smith's quarterly Wrap Fee is $216.56 ($48,124.44 × 0.45%). This amount is deducted from the account based on the Fund/fee hierarchy. [12] The Fund/fee hierarchy determines which position(s) will be liquidated to pay fees. Because Mr. Smith has enough assets in the American Performance Treasury Money Market Fund to pay the fee, a liquidation of $216.56 is posted to this Fund.

Offset Fees

- The Bank prepares a spreadsheet detailing the annualized compensation it received from the Affiliated Funds and the Third Party Fund during the quarter. For example,

Fund	Allocation (percent)	Basis points received
American Performance Treasury Money Market	5	2
American Performance Short-Term Income Fund	10	1
American Performance Intermediate Bond Fund	5	3
American Performance Bond Fund	5	3
Federated GNMA Fund	10	3
Federated Bond Fund	10	3
Federated Equity Income Fund	9	2
American Performance Equity Fund	29	24
American Performance Growth Equity Fund	9	7
Templeton Foreign Fund	3	1
Neuberger & Berman Genesis Assets Fund	5	3
Total	100	52

[12] It is represented that Funds are liquidated to pay fees in the following order: American Performance U.S. Treasury Fund, American Performance Intermediate Bond Fund, American Performance Bond Fund, Federated Bond Fund, Federated GNMA Trust Fund, Federated Equity Income Fund, American Performance Equity Fund, Templeton Foreign Fund, Neuberger and Berman Genesis Asset Fund and the American Performance Aggressive Growth Fund.

Because each Asset Allocation Model, other than the Aggressive Growth Model, includes an investment in a money market fund, the Bank anticipates that almost all of the Wrap Fee will be taken from the American Performance Treasury Money Market Fund. An Account's entire holding in a particular Fund will be liquidated before any portion of the next Fund in the hierarchy is liquidated. If the liquidation is more than $1,000, the Account automatically will be rebalanced. If the liquidation is for $100 to $1,000, the Account will be rebalanced at the next quarter's end. If the liquidation is for less than $100, the Account will not be rebalanced on account of the fee payment, although it may be rebalanced in the regular course of the Foundations Program.

• The rebate to be credited to Mr. Smith's account is calculated by multiplying his average daily balance ($48,124.44) by the basis points received (52) and then dividing the result by 4. The rebate ($62.56) [($48,124.44 × 0.52%/4)] is credited to the American Performance Treasury Money Market Fund. [13]

Disclosures

18. Aside from the Investor Profile described in Representation 6, Primary Independent Fiduciaries and Directing Independent Fiduciaries will receive several types of disclosures: (a) Initial disclosures which are made to the Primary Independent Fiduciary and, if applicable, the Directing Independent Fiduciary before a Plan is enrolled under the Foundations Program; (b) subsequent disclosures which are made exclusively to the Primary Independent Fiduciary; (c) specific disclosures which are made to the Primary Independent Fiduciary or the Directing Independent Fiduciary; and (d) continuing disclosures that are made to the Primary Independent Fiduciary or the Directing Independent Fiduciary throughout the time that the participating Plan is enrolled under the Foundations Program.

(a) *Initial Disclosures for the Primary Independent Fiduciary or the Directing Independent Fiduciary.* Before a Plan's assets are invested under the Foundations Program, the Primary Independent Fiduciary or, if applicable, the Directing Independent Fiduciary, will receive a brochure describing the Foundations Program, a Foundations Asset Allocation Account Application, a Foundations Asset Allocation Purchase Order, and a Foundations Program Account Agreement. The Account Agreement will provide detailed information on the Foundations Program, including the way in which fees are calculated and charged, the procedure for and limitations on the Bank's ability to make Model Adjustments and its rebalancing of a participating Plan, and the procedure to be followed in the event that the Primary or Directing Independent Fiduciary objects to a Model Adjustment. In addition, the Bank will disclose, through the Form ADV-Part II, its affiliation or non-affiliation with the Funds to the Primary Independent Fiduciary prior to such fiduciary's enrolling an eligible Plan in the Program. Further, the Bank will provide to the Primary Independent Fiduciary the executed Account Agreement and copies of the proposed exemption and the grant notice. Assuming the Bank provides copies of the proposed exemption and the grant notice directly to the Primary Independent Fiduciary, such disclosures may be distributed by the Primary Independent Fiduciary to the Directing Independent Fiduciaries.

To participate in the Foundations Program, the Primary Independent Fiduciary will submit a completed Account Agreement to the Bank. In addition, the Primary Independent Fiduciary will be required to represent in writing that such fiduciary is (1) independent of the Bank and its affiliates; (2) knowledgeable with respect to the Plan in administrative matters; (3) able to make an informed decision concerning the participating Plan's participation in the Foundations Program; and (4) knowledgeable with respect to funding matters related to the Plan.

Once the Plan is enrolled in the Foundations Program, the Primary Independent Fiduciary or, if applicable, the Directing Independent Fiduciary, will complete an Investor Profile and submit it to an investment counselor in the manner described herein in Representation 6.

(b) *Subsequent Disclosures Exclusively for the Primary Independent Fiduciary.* In addition to the initial disclosures described above in Representation 18(a), the Bank will provide each Primary Independent Fiduciary with the following materials and/or oral disclosures: (1) A copy of the executed Account Agreement between the Plan and the Bank; and (2) a description of the Bank's affiliation, if any, with the sponsors, distributors, administrators, investment advisers, sub-advisers, custodians and transfer agents of each Affiliated and Third Party Fund. In addition, the Primary Independent Fiduciary will acknowledge in writing that he or she has received copies of the aforementioned documents prior to investing in the Foundations Program.

(c) *Specific Disclosures for the Primary Independent Fiduciary or the Directing Independent Fiduciary.* The Bank will provide each Primary Independent Fiduciary or Directing Independent Fiduciary with the following materials and/or oral disclosures prior to investing in an Asset Allocation Model: (1) a written analysis based on such fiduciary's Investor Profile, (2) a description of the Asset Allocation Model recommended by the Bank's investment counselor, which includes a description of the actual fee structure and the actual number of basis points that will be rebated to such Plan fiduciary; (3) a prospectus for each Affiliated Fund and Third Party Fund in which the Plan may be invested, showing, among other things, the internal fees for the Fund; and (4) upon the request of the Primary Independent Fiduciary or the Directing Independent Fiduciary, a Statement of Additional Information which supplements the prospectus. The Primary Independent Fiduciary or the Directing Independent Fiduciary will also acknowledge in writing to the Bank that he or she has received copies of the aforementioned documents prior to the Plan's investment in an Asset Allocation Model.

(d) *Continuing Disclosures for the Primary Independent Fiduciary or the Directing Independent Fiduciary.* In addition to the disclosures described above, the Bank will provide each Primary Independent Fiduciary and Directing Independent Fiduciary with the following continuing disclosures: (1) Copies of applicable prospectuses; (2) written confirmation of each purchase and redemption of shares of an Affiliated Fund or a Third Party Fund, including transactions implemented as a result of a realignment of the Asset Allocation Model's investment mix or from the rebalancing of a participating Plan's investments in conformity with the selected Asset Allocation Model; (3) telephone quotations of the Plan's balance under the Foundations Program; (4) periodic, but at least quarterly, account statements showing the Plan's value, a summary of purchase, sale and exchange activity and dividends received or reinvested, a summary of cumulative realized gain and/or loss, and rebated amounts; (5) semiannual or annual reports that include financial

[13] For each Fund represented in the foregoing Asset Allocation Model, the Bank will determine the total number of basis points received on an annual basis from all fee sources within that Fund. As noted above, these fees include Rule 12b-1 Fees, Advisory Fees and Administrative Fees. For example, for the American Performance Equity Fund, the total annual basis points received is 83.

The Bank will then multiply this amount (83) by the percentage of the Fund contained in the Asset Allocation Model. In this Asset Allocation Model, 29 percent of the investor's money is allocated to the American Performance Equity Fund. Accordingly, under the Bank's fee-offset arrangement, 29 percent of 83 basis points (or 24 basis points) will be rebated to Mr. Smith's account.

The Bank represents that this method of allocation will be repeated for all Funds shown in this particular Asset Allocation Model. The total rebated amounts attributable to each Fund will be added together to arrive at the total number of basis points that will be rebated to investors in this Asset Allocation Model. Accordingly, Mr. Smith and other investors in this Asset Allocation Model, will be rebated 52 basis points on an annual basis.

In addition, Mr. Smith and other investors will receive full disclosure from the Bank regarding the fees and the fee-offset arrangement, including the actual number of basis points to be rebated under an applicable Allocation Model. To show how the rebate is calculated, a spreadsheet will be utilized. Finally, an investor will see rebated amounts in their performance statements. (See also Representations 6 and 18.)

statements for the Funds, as well as a description of the fees that are paid by the Funds to the Bank and its affiliates; (6) at least annually, a written or oral inquiry from the Bank to ascertain whether information provided on the Investor Profile is still accurate and to determine if such information should be updated; (7) an annual Termination Advisory; and (8) the Bank's investment advisory and other agreements with any Affiliated Fund as well as its distribution agreement pertaining to the Third Party Funds, upon request. Communications received from the Funds will be distributed to the Primary Independent Fiduciary, who may elect to pass this information through to Directing Independent Fiduciaries.

Finally, for a period of six years, the Bank will maintain records necessary to enable the Department, Plan fiduciaries, participants and others to determine whether the conditions of the requested exemption have been met.

More Steering Concerns

19. The Applicants state that the Asset Allocation Models used in the Foundations Program were designed to meet very specific risk tolerances and investment objectives developed by Morningstar and Lipper. The Applicants note that each Asset Segment in an Asset Allocation Model performs a role in addressing those tolerances and objectives. In this regard, the Applicants explain that each Asset Segment is represented by only one Fund—an Affiliated Fund or a Third Party Fund. Therefore, the Applicants state that the Bank cannot steer assets within an Asset Allocation Model to a Third Party Fund rather than an Affiliated Fund representing the same Asset Segment.

20. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an administrative exemption under section 408(a) of the Act because:

(a) The investment of a Plan's assets under the Foundations Program will be made by a Primary Independent Fiduciary or a Directing Independent Fiduciary who is independent of the Bank and its affiliates such that the Plan fiduciary will maintain complete discretion with respect to participating under the Foundations Program.

(b) No Plan will pay a fee or commission by reason of the acquisition or redemption of shares of the Funds.

(c) As to each Plan, the total fees that are paid to the Bank and its affiliates will constitute no more than reasonable compensation for the services provided.

(d) Prior to investing under the Foundations Program, each Primary Independent Fiduciary or Directing Independent Fiduciary will receive offering materials and disclosures from the Bank which set forth all material facts concerning the purpose, fee structure, rebate arrangement, operation, rebalancing, risks and participation in such Program.

(e) The Bank will provide written documentation to a Primary Independent Fiduciary or a Directing Independent Fiduciary of its recommendations based upon objective criteria that will be uniformly applied.

(f) The quarterly Wrap Fee that is paid by a Plan to the Bank for asset allocation and related services rendered to such Plan under the Portfolio Advisor Program will be offset by—(1) All Advisory Fees received by the Bank and/or its affiliates from the Affiliated Funds; (2) all Administrative Fees that are received by the Bank from the Affiliated Funds; and (3) all Administrative Fees that are paid by the Third Party Funds to the Bank and/or its affiliates, such that the sum of the Wrap Fee and the Offset Fees will always equal the total Wrap Fee and the selection of Affiliated or Third Party Funds will always be revenue-neutral.

(g) No Plan assets will be invested according to a Model Adjustment without the consent of the Primary Independent Fiduciary if the Model Adjustment is outside the range specified in the Account Agreement.

(h) The periodic rebalancing of a Plan investor's account will not involve an exercise of discretionary management or control over the Plan by the Bank.

(i) The Bank will retain the Independent Financial Analyst to (1) review the investment of Plan assets in a Third Party Fund to ensure adequate performance and suitability, (2) review the Funds each time the Bank determines to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund; and (3) ensure that there is no overlap between the Funds.

(j) Although the Primary Independent Fiduciary or the Directing Independent Fiduciary may withdraw from the Foundations Program at any time, any authorizations made by such Plan investors with respect to increases in the Wrap Fee, Model Adjustments that are outside of an Asset Allocation Model, the addition or substitution of a Fund, will be terminable at will and without penalty to the Plan.

(k) Each Primary Independent Fiduciary or Directing Independent Fiduciary will receive ongoing disclosures from the Bank regarding the continued participation of the Plan in the Foundations Program.

(l) All dealings between a Plan, the Funds and the Bank will remain on a basis which is at least as favorable to the Plan as such dealings are with other shareholders of the Funds holding the same classes of shares as the Plan.

Notice to Interested Persons

The Applicants represent that because potentially interested participants and beneficiaries of eligible Plans which might choose to participate in the Foundations Program cannot be identified at this time, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by publication of the notice of pendency in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department no later than 30 days from the date of the publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

First Tennessee National Corporation Located in Memphis, Tennessee

[Application No. D–10898]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice

with respect to the assets of that Excluded Plan.[14]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[15] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[16]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for

[14] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[15] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[16] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this proposed exemption:

A. ''Certificate'' means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986; and

(b) That is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which FTNC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) Are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) Are credited to a capitalized interest account (as defined in section III.X.); and

(iii) Are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term ''permitted investments'' means investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption.

C. ''Underwriter'' means:

(1) First Tennessee National Bank (the Bank) or First Tennessee Securities Corporation (FTSC);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with FTNC; or

(3) Any member of an underwriting syndicate or selling group of which FTNC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption (if granted) applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. ''Rating Agency'' means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch IBCA, Inc. (Fitch), or their successors.

X. ''Capitalized Interest Account'' means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. ''Closing Date'' means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. ''Pre-Funding Account'' means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. ''Pre-Funding Period'' means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. ''FTNC'' means First Tennessee National Corporation, a Tennessee corporation, and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (see 60 FR at 35932).

Summary of Facts and Representations

1. FTNC, a Tennessee corporation, is a Memphis, Tennessee based bank holding company, which has assets of over $18 billion and through its subsidiaries, including the Bank, operates 419 branches in various cities in Tennessee, Arkansas and Mississippi. FTNC also owns and operates subsidiaries that engage in trust, brokerage, investment management, mortgage banking and consumer finance, including First Tennessee ABS, Inc.

FTSC is a subsidiary of the Bank. On April 12, 1999, the Office of the Controller of the Currency (OCC) granted approval for the Bank to establish FTSC as a wholly-owned subsidiary of the Bank. The OCC approval permitted FTSC to engage in certain securities activities which are permissible for national banks to engage in directly, and also to underwrite and deal in municipal revenue bonds. On January 28, 2000, the OCC granted approval for FTSC to expand its activities in underwriting and dealing activities with respect to all types of debt and equity securities other than interests in open-end investment companies. On March 13, 2000, the OCC approved a certification and notice filed by the Bank for FTSC to become a ''financial subsidiary'' as permitted by the Gramm-Leach-Bliley Act (G–L–B Act) and OCC regulation. As a financial subsidiary, FTSC may conduct securities activities which are permissible for the Bank to engage in directly as well as securities activities which the G–L–B Act has defined as ''financial in nature,'' such as underwriting, dealing in, and making a market in, all types of securities, including interests in open-end investment companies.

Trust Assets

2. FTNC seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [17] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[18]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mort gages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[19]

Trust Structure

4. Each trust is established under a pooling and servicing agreement

[17] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. FTNC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, FTNC has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[18] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of ''plan assets'' (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[19] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

between a sponsor, a servicer and a trustee.[20] The sponsor or servicer of a trust selects assets to be included in the trust.[21] These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[22]

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

FTNC, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by FTNC on a firm commitment basis. In addition, FTNC anticipates that it may privately place certificates on both a firm commitment and an agency basis. FTNC may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive distributions of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable. These distributions will be made monthly, quarterly, semi-annually, or at such other intervals and dates as specified in the related prospectus or private placement memorandum.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. FTNC requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/ slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[23]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[24]

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to

[20] The Department is of the view that the term ''trust'' includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

[21] It is the Department's view that the definition of ''trust'' contained in section III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[22] It is the view of the Department that section III.B.(4) includes within the definition of the term ''trust'' rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreements or other notional principal contracts.

[23] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this proposed exemption.

[24] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust (''FASIT''), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure With Pre-Funding Account

Pre-Funding Accounts:

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to an underwriter for cash or to the certificateholders directly if the certificates are sold through a placement agent. The cash received by the sponsor from the certificateholders (or the underwriter) from the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (*i.e.,* servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the rating agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the rating agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In such situations, the sponsor could sell the receivables into the trust at a discount, and more receivables would be used to fund the trust in order to support the pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a

repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account:

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate.

In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments:

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period:

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such

trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will be either: (i) Monitored by a credit support provider or other insurance provider which is independent of the sponsor; or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, FTNC and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer. The originator may be an affiliate of FTNC.

12. The *sponsor* will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to FTNC, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). FTNC represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be ''subserviced'' by their respective originators and a single entity may ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* (*i.e.,* FTNC, its affiliate, or a member of an underwriting syndicate or selling group of which FTNC or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to FTNC. In

other cases, however, affiliates of FTNC may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[25] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

22. The certificates will have received one of the three highest ratings available from a rating agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain

[25] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (*i.e.* act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the certificates; and

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

28. FTNC may contemplate entering into forward delivery commitments in connection with the offering of pass-through certificates. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and FTNC may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. FTNC may attempt to make a market for securities for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times, FTNC will facilitate sales by investors who purchase certificates if FTNC has acted as agent or principal in the original private placement of the certificates and if such investors request FTNC's assistance.

Summary

30. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which FTNC seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) FTNC anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or

disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of June, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–17065 Filed 7–6–00; 8:45 am]

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Federal Register

Vol. 65, No. 131

Friday, July 7, 2000

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FEDERAL REGISTER PAGES AND DATE, JULY

40967–41320 3
41321–41550 5
41551–41864 6
41865–42272 7

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamation:
7325 41313
7326 41547
7327 41865

Executive Orders:
13129 (See Notice of June 30, 2000) 41549
13161 41543

Administrative Orders:
Notices:
June 30, 2000 41549

5 CFR

3 41867
178 40967
213 41867
315 41867
550 41868

7 CFR

272 ..... 41321, 41752
273 ..... 41321, 41752
274 41321
723 41551
931 41557
958 40967
982 40970
985 40973
989 40975
1464 41551

Proposed Rules:
905 41608
927 41018

10 CFR

Proposed Rules:
55 41021

12 CFR

5 41559
915 41560
925 40979
950 40979

14 CFR

39 ..... 40981, 40983, 40985, 40988, 41326, 41869, 41871
71 ..... 40990, 40991, 41328, 41329, 41330, 41576
95 41578

Proposed Rules:
13 41528
39 ..... 41381, 41385, 41884
71 ..... 41387, 41388

17 CFR

211 40992

18 CFR

284 ..... 41581, 41873

Proposed Rules:
284 41885

21 CFR

73 ..... 41581, 41584
178 41874
524 41587
556 41588
558 ..... 41589, 41876
884 41330

Proposed Rules:
101 41029

23 CFR

Proposed Rules:
450 41891
771 41892
1410 41891
1420 41892
1430 41892

24 CFR

Proposed Rules:
27 41538
290 41538

26 CFR

1 ..... 40993, 41332

Proposed Rules:
1 41610

29 CFR

Proposed Rules:
4022 41610
4044 41610

30 CFR

250 41000

Proposed Rules:
70 (2 documents) 42122
72 (2 documents) 42068
75 (2 documents) 42122
90 (2 documents) 42122
250 41892

31 CFR

501 41334
598 41334

32 CFR

199 41002

33 CFR

100 41003
165 ..... 41004, 41005, 41007, 41009, 41010, 41342, 41590

34 CFR

99 41852

37 CFR

Proposed Rules:
102 41903

201 41612

39 CFR

111 41877
775 41011

40 CFR

52 ....41344, 41346, 41350, 41352, 41355, 41592
63 41594
180 ....41365, 41594, 41601
300 41369
712 41371

Proposed Rules:

52 ....41389, 41390, 41391
131 41216
136 41391
141 41031
142 41031
146 42248
300 41392
434 41613

42 CFR

59 41268
409 41128
410 41128
411 41128
413 41128
424 41128
484 41128

45 CFR

1635 41879

47 CFR

73 ....41012, 41013, 41375, 41376, 41377
101 41603

Proposed Rules:

1 41613
2 41032
24 41034
73 ....41035, 41036, 41037, 41393, 41401, 41620, 41621
74 41401
87 41032

48 CFR

501 41377
511 41377
512 41377
525 41377
532 41377
537 41377
552 41377

Proposed Rules:

8 41264
15 41264
44 41264
52 41264
225 41037
242 41038
252 41038

49 CFR

1 41282
215 41282
220 41282
238 41282
260 41838

Proposed Rules:

613 41891
621 41891
622 41892
623 41892

50 CFR

622 ....41015, 41016, 41379
648 41017
679 ....41380, 41883

Proposed Rules:

17 ....41404, 41405, 41782, 41812, 41917
600 41622
622 41041
660 ....41424, 41426
679 41044

REMINDERS

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.

RULES GOING INTO EFFECT JULY 7, 2000

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Pears (Bartlett) grown in—
Oregon and Washington; published 7-6-00

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
Polyether polyols production, etc.; published 5-8-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
Salinomycin, bacitracin methylene disalicylate, roxarsone; published 7-7-00

Food additives:
Adjuvants, production aids, and sanitizers—
1,6-hexanediamine, etc.; published 7-7-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:
Multifamily housing projects; tenant participation; published 6-7-00¶

RULES GOING INTO EFFECT JULY 9, 2000

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
California; published 6-6-00

Ports and waterways safety:
Hudson River, NY; safety zone; published 7-5-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Egg, poultry, and rabbit products; inspection and grading:
Fees and charges increase; comments due by 7-14-00; published 6-14-00

Hazelnuts grown in—
Oregon and Washington; comments due by 7-14-00; published 6-14-00

Raisins produced from grapes grown in—
California; comments due by 7-10-00; published 4-10-00

Soybean promotion and research order; comments due by 7-14-00; published 5-15-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
Fire ant, imported; comments due by 7-10-00; published 5-11-00

COMMERCE DEPARTMENT

Export Administration Bureau

Export licensing:
Commerce control list—
Microprocessors controlled by ECCN 3A001 and Graphics accelerators controlled by ECCN 4A003; License Exception CIV eligibility expansion; comments due by 7-13-00; published 6-13-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Gulf of Alaska groundfish; comments due by 7-11-00; published 5-12-00
Pacific cod; comments due by 7-10-00; published 5-26-00
Pollock; steller sea lion protection measures; comments due by 7-12-00; published 6-12-00
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 7-10-00; published 6-9-00

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
Energy efficiency of supplies and services; comments due by 7-10-00; published 5-10-00

EDUCATION DEPARTMENT

Freedom of Information Act; implementation; comments due by 7-10-00; published 6-9-00

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
Water heaters; energy conservation standards; comments due by 7-12-00; published 4-28-00

ENVIRONMENTAL PROTECTION AGENCY

Acquisition regulations:
Miscellaneous amendments; comments due by 7-14-00; published 6-14-00

Air pollution control:
State operating permits programs-
Georgia; comments due by 7-10-00; published 6-8-00
Georgia; comments due by 7-10-00; published 6-8-00
State operating permits programs—
Montana; comments due by 7-13-00; published 6-13-00
Montana; comments due by 7-13-00; published 6-13-00
Tennessee; comments due by 7-10-00; published 6-8-00
Tennessee; comments due by 7-10-00; published 6-8-00

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
West Virginia; comments due by 7-13-00; published 6-13-00

Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 7-12-00; published 6-12-00
California; comments due by 7-10-00; published 6-8-00
Indiana; comments due by 7-10-00; published 6-8-00
Utah; comments due by 7-14-00; published 6-14-00
Wisconsin; comments due by 7-10-00; published 6-8-00

Solid wastes:
Municipal solid waste landfill permit programs; adequacy determinations—
West Virginia; comments due by 7-12-00; published 6-12-00
West Virginia; comments due by 7-12-00; published 6-12-00

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 7-10-00; published 5-11-00

Water pollution; effluent guidelines for point source categories:
Coal mining; comments due by 7-10-00; published 6-1-00

Water supply:
National primary drinking water regulations—
Ground water systems; waterborne pathogens from fecal contamination; public health risk reduction; comments due by 7-10-00; published 5-10-00
Interim enhanced surface water treatment rule, Stage 1 disinfectants and disinfection byproducts rule, and State primacy requirements; revisions; comments due by 7-13-00; published 6-13-00

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Tariffs—
Competitive local exchange carriers interstate access services; mandatory detariffing; comments due by 7-12-00; published 6-26-00

Radio stations; table of assignments:
Various States; comments due by 7-10-00; published 6-1-00

Television broadcasting:
Telecommunications Act of 1996—
Closed captioning and video description of video programming; emergency programming accessibility; comments due by 7-10-00; published 5-9-00

FEDERAL TRADE COMMISSION

Industry guides:
Household furniture industry; comments due by 7-10-00; published 6-14-00

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Energy efficiency of supplies and services; comments due by 7-10-00; published 5-10-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community facilities:

Supportive Housing Program; operating cost percentage increase; comments due by 7-11-00; published 5-12-00

Grants and agreements with higher education institutions, hospitals, and other non-profit organizations; uniform administrative requirements; comments due by 7-10-00; published 5-11-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Cook's lomatium and large-flowered wooly meadowfoam; comments due by 7-14-00; published 5-15-00

Findings on petitions, etc.—

Slender moonwort; comments due by 7-10-00; published 5-10-00

JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:

District of Columbia Code; prisoners serving sentences; comments due by 7-10-00; published 5-9-00

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright office and procedures:

Sound recordings, public performance; service definition; comments due by 7-14-00; published 7-6-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Energy efficiency of supplies and services; comments due by 7-10-00; published 5-10-00

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Annuity or lump sum application; divorced spouse benefits; comments due by 7-10-00; published 5-11-00

SMALL BUSINESS ADMINISTRATION

Disaster loan program:

Pre-Disaster Mitigation Loan Program; comments due by 7-14-00; published 6-14-00

SOCIAL SECURITY ADMINISTRATION

Testimony by agency employees and records production in legal proceedings; comments due by 7-10-00; published 5-10-00

TRANSPORTATION DEPARTMENT

Coast Guard

Boating safety:

Blood alcohol concentration; Federal standard for recreational vessel operators; comments due by 7-14-00; published 3-16-00

Drawbridge operations:

Virginia; comments due by 7-14-00; published 5-15-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 7-12-00; published 6-12-00

Bell; comments due by 7-10-00; published 5-9-00

Boeing; comments due by 7-14-00; published 5-30-00

Saab; comments due by 7-10-00; published 6-13-00

Schweizer Aircraft Corp.; comments due by 7-10-00; published 5-9-00

Class E airspace; comments due by 7-10-00; published 5-23-00

Class E airspace; correction; comments due by 7-10-00; published 6-16-00

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 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 761/P.L. 106–229

Electronic Signatures in Global and National Commerce Act (June 30, 2000; 114 Stat. 464)

H.R. 4762/P.L. 106–230

To amend the Internal Revenue Code of 1986 to require 527 organizations to disclose their political activities. (July 1, 2000; 114 Stat. 477)

Last List June 30, 2000

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